

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

No. 5:06-HC-02195-BR

GRAYDON EARL COMSTOCK, JR.,

Respondent.

Bench Trial
HON. BERNARD A. FRIEDMAN, Judge
November 28, 2011
9:00 a.m. - 5:05 p.m.
Raleigh, North Carolina

REPORTED BY: Joseph C. Spontarelli, CCR

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1 P R O C E E D I N G S

2 9:00 a.m.

3

4 THE COURT: Call the case.

5 THE CLERK:: Case No. 5:06-HC-02195-BR,
6 United States versus Graydon Earl Comstock, Jr.

7 THE COURT: May we have appearances?

8 MR. ROYSTER: Good morning, Your Honor.
9 Joshua Royster, Assistant United States Attorney
10 for the government.

11 MR. GRAY: Good morning, Your Honor.
12 Edward Gray, Assistant United States Attorney for
13 the government.

14 MS. GRAVES: Good morning, Your Honor.
15 Debra Graves, Assistant Federal Public Defender on
16 behalf of Graydon Earl Comstock, Jr.

17 MS. SHEA: Good morning, Your Honor.
18 Kat Shea also on behalf of Mr. Comstock.

19 THE COURT: Let the record reflect this
20 is the date and time scheduled for the hearing on
21 this matter.

22 The Respondent is present. The record
23 should also reflect that the Court has before it
24 the government's trial exhibits, respondent's
25 trial exhibits as well as the other documents that

1 have been filed.

2 Also, it's my understanding that the
3 Magistrate Judge has made rulings on the Motions
4 in Limine. The Court has had an opportunity to
5 review those and the Court agrees with the
6 Magistrate Judge's rulings on those and will adopt
7 them for purposes of this trial.

8 Are there any other preliminary matters
9 that we should talk about before we start the
10 trial starting with the petitioner?

11 MR. ROYSTER: No, Your Honor.

12 THE COURT: Respondent?

13 MS. GRAVES: Your Honor, we will renew
14 our Motion in Limine regarding the admission of
15 Mr. Comstock's sex offender treatment records.

16 I've read the order which was provided
17 to me this morning. We believe that there is a
18 distinction between the disclosure of the records
19 to Dr. Campbell who was a court appointed
20 respondent selected examiner such that it should
21 not be viewed as a waiver of the privilege on
22 behalf of Mr. Comstock.

23 I would note the distinction between a
24 court examiner and a respondent examiner. We do
25 have a respondent examiner in this case. We chose

1 an examiner and retained one of our own. He's not
2 really an examiner, but he's an expert -- a
3 non-examining expert -- Dr. George Corvin. We
4 chose him, we paid him and we did not disclose
5 Mr. Comstock's sex offender treatment records to
6 our expert. We maintained the privilege.

7 What was provided to Dr. Campbell who
8 was a court examiner were the discovery materials,
9 the disclosures that had been provided to us by
10 the government. Our understanding of a court
11 examiner is that he is not a person that we are in
12 control of. We simply provided the information to
13 him that had been provided to the previous court
14 examiner who had been retained by the government
15 and in doing so putting him on the same playing
16 field as the previously selected examiners that
17 had offered opinions regarding Mr. Comstock. It
18 was certainly not Mr. Comstock's intention to
19 waive any privilege by doing so.

20 THE COURT: I understand your argument.
21 We had gone over your motions before we got here
22 today and I believe that the Magistrate has
23 reached the correct conclusions for the proper
24 reasons and therefore I will deny the motion.
25 However, it is on the record and clearly objected

1 to so it will be noted.

2 MS. GRAVES: Thank you, Your Honor.

3 THE COURT: Anything else?

4 (No audible response.)

5 THE COURT: I'm pretty familiar with
6 the case. If you care to petitioner you may make
7 a short opening statement.

8 MR. ROYSTER: Thank you, Judge.

9 Judge, as you know this is a case under
10 the Adam Walsh Act in which the United States
11 seeks to civilly commit Graydon Comstock as a
12 sexually dangerous person.

13 To prevail we must show by clear and
14 convincing evidence that Mr. Comstock has engaged
15 in or attempted to engage in sexually violent
16 conduct or child molestation and he is sexually
17 dangerous to others; that is that he suffers from
18 a serious mental illness, abnormality or disorder
19 as a result of which he would have serious
20 difficulty refraining from sexually violent
21 conduct or child molestation if released.

22 Judge, Graydon Comstock is 69 years
23 old. On June 6th of the year 2000 when he was 58
24 years old he pleaded guilty to two counts of
25 aggravated indecent liberties with a child in

1 Kansas. These charges related to him molesting a
2 first grader and a fourth grader at the school
3 where he worked. Additional charges relating to
4 his molestation of another first grader and a
5 third grader were dismissed as part of his plea.
6 He was sentenced to 55 months imprisonment.

7 During the investigation of the
8 allegations of the child molestation law
9 enforcement executed a search warrant at his home.
10 During the search they found child pornography on
11 his computer, pictures of child porn printed out
12 and laying around in various places throughout his
13 apartment, materials from NAMBLA -- North American
14 Man-Boy Love Association -- a pro pedophilic
15 organization -- a book called Loving Sander which
16 you will hear testimony about, permission slips
17 for other children to visit his home so that they
18 could play games.

19 Judge, as a result of the possession of
20 the child pornography he was charged and convicted
21 federally. He was sentenced to 37 months in
22 federal prison to run consecutive to his state
23 term.

24 Mr. Comstock was scheduled for release
25 from federal prison on November 8, 2006 but as a

1 result of the Adam Walsh Act and the resulting
2 appellate proceedings bearing his name
3 Mr. Comstock has remained in federal custody
4 pending this evidentiary hearing on whether he
5 should be committed as a sexually dangerous
6 person.

7 Judge, you're going to hear testimony
8 in this case from multiple expert witnesses and
9 likely Mr. Comstock himself. There will be
10 testimony about his admission to molesting
11 approximately 100 children during 30 years of his
12 professional career. In fact, Judge, the majority
13 of his career was spent outside the United States
14 in places like India, Peru, Philippines, Iran and
15 Dubai where he molested children and had sex with
16 child sex workers that he met through pimps.

17 Judge, after having sex with one of
18 these children in the Philippines Mr. Comstock
19 took him in as a foster son. His name is Michael
20 and you will hear testimony about his relationship
21 with him.

22 You will also hear testimony about the
23 grooming tactics, the planning and the other
24 things that Mr. Comstock did to get close to the
25 children so that he would have opportunities to

1 molest them.

2 Dr. Amy Phenix is the government's
3 non-BOP expert. She has testified in hundreds of
4 civil commitment cases of sexually dangerous
5 persons in numerous jurisdictions all over the
6 country including some of the Adam Walsh trials in
7 this district and in Massachusetts. She finds
8 that Mr. Comstock suffers from pedophilia and he
9 is a sexually dangerous person.

10 Dr. Lela Demby is the BOP psychologist
11 assigned to this case. As you know she testified
12 by de bene esse deposition. She has evaluated
13 more than 1000 federal inmates under the Adam
14 Walsh Act and she, too, finds that Mr. Comstock
15 suffers from pedophilia and he is a sexually
16 dangerous person.

17 Judge, you will hear testimony from Dr.
18 Terence Campbell. He is the respondent's chosen
19 examiner. He agrees with Dr. Phenix and Dr. Demby
20 that Mr. Comstock suffers from pedophilia.
21 However, he believes Mr. Comstock is not sexually
22 dangerous and you will hear testimony that he
23 appears to believe at least in part that
24 Mr. Comstock is not impulsive and because he is
25 not impulsive but rather his actions are planned

1 and premeditated he cannot meet the criteria of
2 the Adam Walsh Act.

3 Dr. George Corvin is a forensic
4 psychiatrist who will testify that while he hasn't
5 personally examined Mr. Comstock he has reviewed
6 his file and he knows and believes that
7 Mr. Comstock suffers from several medical
8 conditions and as a result of those conditions his
9 libido is decreased. Judge, he does not opine on
10 the issue of sexual dangerousness. His testimony
11 will be limited to that if his libido has
12 decreased then it's likely that his sexual
13 dangerousness may have been decreased.

14 Dr. Phenix and Dr. Demby will explain
15 why the factors of his age and his medical
16 conditions do not mean that he is not sexually
17 dangerous.

18 Judge, the evidence will show that even
19 after being certified as a sexually dangerous
20 person and awaiting his commitment hearing
21 Mr. Comstock was still feeding his sexual urges.
22 In June 2008 the BOP officials found numerous
23 images of underage males cut out from magazines
24 and newspapers in his cell. Approximately
25 one-third are youth and partially dressed, and one

1 depicts a full front of a nude pre-adolescent
2 male.

3 Mr. Comstock has indicated he will not
4 participate in treatment because being a pedophile
5 is who I am; and even if there were a magic pill
6 to take that could cure pedophilia he said I
7 wouldn't take it.

8 We agree, Judge, that being a pedophile
9 is who Mr. Comstock is. We also agree that he has
10 a serious mental disorder, abnormality or illness
11 and as a result of it he will have serious
12 difficulty refraining from committing sexually
13 violent conduct or child molestation if released.

14 Judge, at the end of this trial we will
15 ask that you commit him under 4248 as a sexually
16 dangerous person so that he can get the treatment
17 he needs and we believe he should have before he
18 is released back into the community. Thank you,
19 Judge.

20 THE COURT: Thank you. Counsel.

21 MS. GRAVES: Thank you, Your Honor.

22 Your Honor, it is our view that the
23 government's evidence will focus largely on
24 Mr. Comstock's past. We want the Court to focus
25 on Mr. Comstock's present condition and whether he

1 has any current difficulty abiding by the law.

2 Their experts rely heavily on the many
3 offenses that Mr. Comstock has admitted to from
4 his past; and quite frankly, Your Honor, they want
5 to use that evidence to satisfy all three prongs
6 of the Adam Walsh Act.

7 The first prong, of course, is that
8 Mr. Comstock has committed acts of child
9 molestation and Mr. Comstock will not deny that.
10 He will acknowledge that that prong is satisfied.

11 The second prong is that Mr. Comstock
12 has a serious mental illness or disorder and
13 Mr. Comstock will acknowledge that he has
14 pedophilia. He has acknowledged it numerous times
15 and will continue to acknowledge that.

16 The third prong, however, is the one
17 where most of the contest will take place in this
18 case.

19 We ask that the Court focus on
20 Mr. Comstock's current mental status, his current
21 ability to control himself and his current plans
22 for release from the Bureau of Prisons.

23 The evidence will show that
24 Mr. Comstock has already completed a sex offender
25 treatment program. He completed one in Kansas.

15 Finally, we will present evidence that
16 Mr. Comstock has a very good, solid relapse
17 prevention plan. That Mr. Comstock's sister Mary
18 will come before the Court and testify to her
19 willingness to take in her brother to provide a
20 supportive, loving, caring and very law abiding
21 environment for him to live in throughout the rest
22 of his life.

23 We believe that when the Court
24 considers all of these factors the Court will find
25 that the government has failed to prove by clear

1 and convincing evidence that Graydon Earl Comstock
2 if released would have serious difficulty
3 refraining from committing child molestation.
4 Thank you.

5 THE COURT: Thank you very much. First
6 witness, please.

7 MR. ROYSTER: Thank you, Judge. The
8 United States calls Dr. Amy Phenix.

9
10 AMY PHENIX, Ph.D.,
11 was sworn or affirmed and testified as follows:

12
13 THE COURT: Give us your full name and
14 spell your full name.

15 THE WITNESS: Amy Phenix, A-m-y
16 P-h-e-n-i-x.

17 THE COURT: Thank you.
18 Counsel, you may proceed.

19
20 DIRECT EXAMINATION

21
22 BY MR. ROYSTER:

23 Q Dr. Phenix, before I get started at
24 your feet there are two notebooks. At some point
25 during your examination we may be referring to

1 those notebooks and I want you to know where they
2 are. Okay?

3 A Yes.

4 Q Dr. Phenix, what is your occupation?

5 A I'm a clinical psychologist in private
6 practice.

7 Q How long have you been a clinical
8 psychologist?

9 A Since I got my degree in 1990 and my
10 license in 1992.

11 Q Where are you licensed to practice?

12 A The States of California, Washington
13 and Florida.

14 Q Do you have any particular area of
15 expertise?

16 A Forensic psychology/sex offender risk
17 assessment.

18 Q How long have you been involved in this
19 particular area of psychology?

20 A I've worked in forensic psychology
21 since 1989, and I've worked in evaluating sex
22 offenders and sex offender risk assessments since
23 1996.

24 Q Could you please tell the Court your
25 educational background beginning with your

1 undergraduate degree?

2 A I have a Bachelor's Degree in education
3 from the University of Cincinnati. I have a
4 Master's Degree in psychology from the University
5 of South Alabama. I have a Doctorate Degree in
6 clinical psychology from the California School of
7 Professional Psychology in Fresno, California.

8 Q Are you a member of any professional
9 organizations?

10 A Yes.

11 Q What?

12 A I'm a member of the American
13 Psychological Association, the California
14 Psychological Association, the Association for
15 Treatment of Sexual Abusers -- our largest
16 professional group in this area -- California
17 Coalition for Sex Offending and the Forensic
18 Mental Health Association of California.

19 Q If you could take a look, Dr. Phenix,
20 at the government's trial exhibits. If I could
21 refer you to Exhibit 1.

22 A Yes.

23 Q Do you recognize it?

24 A Yes. It's my Curriculum Vitae.

25 Q Is it a current copy of your Curriculum

1 Vitae?

2 A Yes, it is.

3 Q Dr. Phenix, have you given any
4 presentations to professional groups on issues
5 relating to sexual deviancy?

6 A Yes, I have.

7 Q Could you tell the Court a little bit
8 about those?

9 A Since about 1997 I have given many
10 presentations and trainings to professional
11 groups. For example, all types of mental health
12 workers, law enforcement, probation and parole
13 officers, sexual assault investigators on issues
14 having to do with evaluating sex offenders,
15 understanding sex offender risk and also to groups
16 of evaluators that conduct sexually violent
17 predator evaluations and sexually dangerous person
18 evaluations throughout various states in the U.S.

19 Q You mentioned sexually dangerous and
20 sexually violent persons. Do you mean with
21 respect to civil commitment of those individuals?

22 A That's correct.

23 Q Have you authored or co-authored any
24 peer reviewed articles on sexual deviancy?

25 A Yes, I have.

1 Q Are those listed in your resume?

2 A Yes, they are.

3 Q Have you authored or co-authored any
4 articles about sex offender evaluations and risk
5 assessments?

6 A Yes, I have.

7 Q Are those in your resume as well?

8 A They are.

9 Q Dr. Phenix have you, yourself,
10 conducted sex offender evaluations?

11 A Yes.

12 Q Approximately how many have you done?

13 A In total I would say from the time I
14 worked in the prison system through the current
15 time I've conducted at least 500/600 sex offender
16 evaluations overall.

17 Q Have you diagnosed and treated sex
18 offenders?

19 A Yes, I have. Since 1989.

20 Q You mentioned since 1989. What were
21 you doing when you were treating sex offenders in
22 1989?

23 A I was doing my clinical internship at
24 the California Men's Colony; a medium security
25 prison on the central coast of California where I

1 remained as a staff psychologist for six years.

2 There I was responsible for evaluating
3 individuals with mental disorders that were
4 transferred to this essentially large psychiatric
5 hospital for the Department of Corrections. Many
6 of those individuals transferred to the facility
7 were sex offenders who I evaluated and provided a
8 diagnosis and provided treatment to them because
9 the prison served as a large protective custody
10 institution.

11 Q What did you do after your work with
12 the California Men's Colony?

13 A Actually I took a year off and
14 transferred -- still working with California Men's
15 Colony -- to the parole department in Fresno,
16 California. There I was responsible for a
17 caseload of offenders who had mental illness, who
18 had committed violent crimes and who had committed
19 sex offenses and I provided treatment to sex
20 offender treatment groups while I worked at the
21 parole department.

22 Q When you were done with your work with
23 the parole department you went back and continued
24 your work with the California Men's Colony?

25 A Yes.

1 Q Do you know approximately how many sex
2 offenders you evaluated or treated as part of your
3 work with the Men's Colony?

4 A I would say 100 to 200, somewhere in
5 there.

6 Q Why did you leave?

7 A I left because they were going to
8 transfer me to an undesirable place to live so I
9 decided still as a civil servant to move to a
10 local forensic hospital where I would not have to
11 move my residence.

12 Q Where was that?

13 A That was Atascadero State Hospital on
14 the central coast of California.

15 Q What did you do there?

16 A There I was responsible for a ward of
17 about 50 what we call mentally disordered
18 offenders in California. These are offenders who
19 had committed -- their most recent crime was
20 considered a violent crime. They had a mental
21 illness. They continued to have symptoms that
22 made them dangerous in prison. They were
23 evaluated according to a California statute and
24 committed to the state hospital as a mentally
25 disordered offender for further treatment until

1 they were no longer dangerous and could be
2 released to the community.

3 Q Was that a sexually violent predator or
4 sexually dangerous predator type law that you're
5 talking about for civil commitment?

6 A No, it was not. It was non-sexual
7 violence, but there were also sexual offenders who
8 had committed violent offenses and were housed or
9 committed as mentally disordered offenders.

10 Q How long were you at Atascadero State
11 Hospital?

12 A Not quite a year.

13 Q What did you do after that?

14 A After that I was transferred to the
15 Department of Mental Health headquarters in
16 Sacramento, California where I served as the
17 clinical consultant to the new Sex Offender
18 Commitment Program which was responsible for
19 evaluating sexually violent predators.

20 Q What year was that that you went to the
21 Department of Mental Health?

22 A It was November of 1995.

23 Q Did you conduct sex offender
24 evaluations there?

25 A Yes, I did.

1 Q Tell the Court about that experience.

2 A This was a brand-new sexually violent
3 predator law in California. My job was to develop
4 the protocol of how to evaluate sexually violent
5 predators, to hire and train the panel of
6 evaluators in California -- the psychologists and
7 psychiatrists -- that conducted those evaluations.
8 I trained them in the research in the area and the
9 clinical aspect of these evaluations, and then
10 also to conduct those evaluations myself and
11 provide court testimony in the county of
12 commitment for those individuals.

13 Q Do you know approximately how many
14 evaluations you did while you were there for civil
15 commitment?

16 A I continued to conduct those
17 evaluations for civil commitment and I've
18 conducted approximately 250.

19 Q How long were you with the Department
20 of Mental Health?

21 A I was a state employee until 1999 so
22 for about four years. I was the clinical
23 consultant for the program. Actually I was the
24 clinical consultant for 15 years. In 1999 I was
25 no longer a state employee but I had the same

1 responsibilities for the program by contract.

2 Q Did you go into private practice next?

3 A Yes.

4 In 1999 I went into private practice,
5 but I maintained the same job for the Department
6 of Mental Health until 2008.

7 Q Dr. Phenix, did your work change in any
8 way when you went into private practice? You
9 mentioned that it was similar. Did it change at
10 all?

11 A It did change.

12 Q How so?

13 A Prior to that time I was in a training
14 role, but in terms of the evaluations I conducted
15 it was for the State of California.

16 After that time in private practice I
17 was able to accept cases working for the
18 respondent which I had not been able to do
19 previously, and also I began to work in many other
20 jurisdictions outside of California.

21 Q What percentage of your practice now
22 involves issues relating to sex offenders and the
23 risk assessment of sex offenders?

24 A All of it.

25 Q How many states, if you know, have

1 civil commitment laws for sexually dangerous
2 persons?

3 A 20.

4 Q Have you testified in all 20?

5 A No.

6 Q How many have you testified in?

7 A Eight or nine.

8 Q Dr. Phenix, do you know how many
9 initial evaluations for civil commitment of
10 sexually dangerous persons you've done during your
11 entire practice?

12 A About 350.

13 Q You mentioned that you had done
14 evaluations for the respondent. Have you ever
15 testified in court for the respondent?

16 A Yes.

17 Q Again civil commitment.

18 A That's right.

19 Q Dr. Phenix, are you familiar with the
20 Adam Walsh Act?

21 A Yes.

22 Q Have you evaluated sex offenders under
23 the Adam Walsh Act to determine if they meet
24 criteria for commitment?

25 A Yes.

1 Q How many total evaluations have you
2 done?

3 A I believe about 24.

4 Q Have you found that each person has met
5 the criteria?

6 A No.

7 Q Were all of those evaluations done as
8 part of your work here in the Eastern District of
9 North Carolina?

10 A No. I also worked in the District of
11 Massachusetts.

12 Q Dr. Phenix, do you know of those 24
13 that you've done how many that you have found met
14 the criteria?

15 A Yes. 21.

16 Q In the cases that you found that the
17 person did not meet the criteria were there cases
18 where the BOP psychologists had found they did and
19 you disagreed?

20 A Yes. All three of them.

21 MR. ROYSTER: Your Honor, at this time
22 we tender Dr. Phenix as an expert in forensic
23 psychology specializing in the evaluation,
24 diagnosis and treatment of sex offenders.

25 THE COURT: Any voir dire?

1 MS. GRAVES: Just one question.

2

3 CROSS-EXAMINATION

4 BY MS. GRAVES:

5 Q Dr. Phenix, are you board certified?

6 A No. We don't have a board
7 certification. I have a license in psychology to
8 practice.

9 Q There is no board certification for
10 forensic psychologists?

11 A Not like medical doctors.

12 MS. GRAVES: Thank you.

13 THE COURT: Any objection to her
14 testifying as an expert?

15 MS. GRAVES: No, sir.

16 THE COURT: She may proceed as an
17 expert.

18 MR. ROYSTER: Thank you, Judge.

19

20 REDIRECT EXAMINATION

21

22 BY MR. ROYSTER:

23 Q Dr. Phenix, were you asked to evaluate
24 Graydon Comstock?

25 A Yes, I was.

1 Q What specifically were you asked to do?

2 A I was asked to review all the records
3 and discovery that was provided in the case and
4 initially to offer an opinion based on record
5 review as to a mental disorder, mental illness and
6 also risk for future sexually violent behavior or
7 child molestation.

8 Q Do you know approximately when you were
9 asked to do this?

10 A I was asked to do it in about March of
11 2011, I believe.

12 Q What kind of information was provided
13 to you to review?

14 A I was provided with information
15 regarding his 2000 criminal adjudication; both his
16 state criminal offense charging documents,
17 conviction documents, presentence investigation
18 report, police reports dealing with his state and
19 federal convictions.

20 I was also provided information from
21 the Department of Corrections when he was
22 incarcerated in Kansas as well as his federal
23 incarceration.

24 I was provided any type of psychiatric
25 or treatment records for his sex offender

1 treatment.

2 I was also provided other evaluations
3 that had been completed for Mr. Comstock
4 pertaining to civil commitment.

5 Q Dr. Phenix, those records that you just
6 identified are those the types of records upon
7 which mental health professionals commonly rely on
8 when evaluating persons to determine whether
9 they're sexually dangerous?

10 A Yes.

11 Q Did you in fact rely on those documents
12 to make that determination?

13 A Yes.

14 Q Did you get an opportunity to interview
15 Mr. Comstock?

16 A Yes, I did.

17 Q How long did the interview last?

18 A The interview lasted, I'd say, about
19 three to four hours.

20 Q What did you do during the interview?

21 A During the interview -- which is
22 relatively structured -- I asked him about his
23 psychosocial history and that would include his
24 upbringing, his developmental history, his family
25 history, school/education history, his employment

1 history, any psychiatric history or evaluations
2 that had been completed for him. I also conduct a
3 thorough psychosexual history given the nature of
4 this type of evaluation. I inquired about any
5 prior criminal history. Those were the types of
6 psychosocial topics that I discussed with him.

7 Q If you could turn to Exhibit 2 in the
8 notebook.

9 A Yes.

10 Q Do you recognize Exhibit 2?

11 A Yes. That would be my report dated
12 April 1, 2011 for Mr. Comstock.

13 Q Was this report written and submitted
14 prior to your opportunity to interview
15 Mr. Comstock?

16 A Yes, it was.

17 Q Did you submit a revised report
18 subsequent to your interview with Mr. Comstock?

19 A Yes, I did.

20 Q If you could take a look at Exhibit 28.
21 Do you recognize it?

22 A Yes. That would be my updated
23 evaluation dated November 6, 2011.

24 MR. ROYSTER: Your Honor, at this time
25 we move into evidence Exhibit 1 which is her CV

1 and Exhibit 2 and 28 her reports.

2 THE COURT: Any objection?

3 MS. GRAVES: No objection.

4 THE COURT: Received.

5 MR. ROYSTER: Thank you, Judge.

6 BY MR. ROYSTER:

7 Q Dr. Phenix, let's talk about your
8 opinion with respect to Mr. Comstock. What is
9 your opinion as to whether he is a sexually
10 dangerous person under the Adam Walsh Act?

11 A I believe he is a sexually dangerous
12 person under the Adam Walsh Act.

13 Q Can you summarize for the Court the
14 basis for your opinion?

15 A Yes, I can.

16 I believe that he has engaged in or
17 attempted to engage in sexually violent conduct or
18 child molestation. I believe that he is dangerous
19 to others and the reason for that is, I believe,
20 that he has a serious mental illness, abnormality
21 or disorder. I also believe that as a result of
22 that mental illness, abnormality or disorder that
23 he would have serious difficulty refraining from
24 sexually violent conduct or child molestation --
25 particularly in this case from child molestation.

6 A That would be his most recent or his
7 only adjudication for criminal sexual behavior in
8 2000 where he pled guilty to two counts of
9 aggravated indecent liberties with children for
10 molesting four prepubescent boys; two brothers age
11 six and seven and another set of brothers age nine
12 and ten years of age.

16 A I examined his history, I examined the
17 interview information that he provided to a number
18 of other doctors or evaluators and I also
19 conducted a clinical interview where I was able to
20 conduct a mental status examination and also
21 examined his psychosexual history and admissions
22 and from that I was able to determine that he did
23 have a mental abnormality or disorder.

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1 A Yes.

2 I referred to the Diagnostic and
3 Statistical Manual of Mental Disorders, 4th
4 Edition which I will call the DSM which is a
5 classification manual of all recognized mental
6 disorders published by the American Psychiatric
7 Association.

8 Q Is the DSM generally accepted in the
9 field of psychology for diagnosing mental
10 disorders?

11 A Yes, it is. It's used by all mental
12 health workers.

13 Q Dr. Phenix, what were your diagnostic
14 conclusions with respect to Mr. Comstock?

15 A I provided a diagnosis for Mr. Comstock
16 of pedophilia, sexually attracted to males,
17 exclusive type and also depressive disorder not
18 otherwise specified.

19 Q Which of these two disorders affect his
20 sexual dangerousness?

21 A Pedophilia, sexually attracted to
22 males, exclusive type.

23 Q Dr. Phenix, what is pedophilia?

24 A Pedophilia is abnormal sexual arousal
25 to prepubescent children.

10 Q When you say six months, does that mean
11 he consistently has that urge or fantasy or
12 behavior or is it just spread out over a period of
13 six months?

14 A It would be the experience of
15 fantasies, behaviors or urges over that period of
16 time of six months. Generally it's much longer.
17 That would be a minimum criteria.

18 Q Has Mr. Comstock in your opinion
19 experienced more than one of those three that you
20 mentioned, the fantasies, urges or behaviors or
21 all three?

22 A He's experienced all three of those
23 over his lifetime.

24 Q Dr. Phenix, in discussing your
25 diagnosis of pedophilia would it assist you in

1 your testimony in reviewing a timeline that you
2 prepared?

3 A Yes, it would.

4 MR. ROYSTER: Your Honor, at this time
5 I would like to have the witness use a timeline to
6 illustrate her testimony. This will not be an
7 exhibit.

8 THE COURT: It will not be an exhibit?

9 MR. ROYSTER: It will not be admitted
10 as an exhibit. It's just for illustrative
11 purposes.

12 THE COURT: Any objection?

13 MS. GRAVES: No.

14 THE COURT: Very well.

15 MR. ROYSTER: May I approach, Judge?

16 THE COURT: Please.

17 BY MR. ROYSTER:

18 Q Dr. Phenix, I've handed you a document.
19 Do you recognize it?

20 A Yes, I do.

21 Q What is it?

22 A This is a chronology of Mr. Comstock's
23 employment. It also contains information not only
24 about where he worked but who he was working with
25 and incidents of sexual molestation during those

1 periods of employment.

2 Q Did this information assist you in
3 diagnosing pedophilia?

4 A Yes, it did.

5 Q Let's talk about it first then.

6 How did this information assist you in
7 diagnosing Mr. Comstock with pedophilia?

8 A This information was one of essentially
9 four areas that I examined to make a determination
10 of pedophilia in this case.

11 The first area I looked at was career
12 choices. Essentially for Mr. Comstock as I look
13 at his history he has designed his life around
14 seeking boys for sexual activity. That in my
15 opinion was the first priority for him.

16 The second priority was the jobs he
17 chose which allowed him to be in the proximity of
18 children.

19 One can see from this timeline as you
20 follow it in 1967 and 1968 he was educated in his
21 field of physical education and recreational
22 administration. He left there with a Master's
23 Degree in recreational administration. He left
24 the University of Arkansas and obtained his first
25 job at the Fayetteville Youth Center as assistant

1 director also working at the same time at Ohio
2 State University.

3 It is notable that his first job
4 involved working with elementary school children.

5 He has reported a lifetime of being
6 sexually aroused to prepubescent children. You
7 will note in every one except one of his jobs he
8 was working with elementary and middle school
9 children -- in this case children ages six to 18.
10 This is when he reports his first two victims
11 through employment.

12 It's typical or not unusual I will say
13 for individuals with pedophilia to seek out
14 situations where they can have the proximity of
15 children; particularly where they can be in some
16 position of authority over children. This is what
17 Mr. Comstock has done throughout his professional
18 life.

19 The only job where he worked with
20 adults would be 1968 at Ohio State University
21 where he was supervising students who would have
22 been generally 18 and over in their own endeavors
23 in being educated in recreation.

24 In 1969 he sought his first job
25 internationally. It is notable that he was

1 employed in a number of different jobs -- sought
2 out these jobs -- in countries where there would
3 be the presence of unsupervised children, where
4 there are countries where there are lax laws
5 regarding sex between adults and children.

6 Furthermore, in this case he worked in
7 jobs where he would be housed with the children.
8 For example, in 1969 at the American International
9 School in India he was a dorm parent and coach so
10 he lived within the proximity of children who did
11 not have parents there so that he could have
12 greater access to those children.

13 Furthermore, he is in the field of
14 physical education where kids would be exercising,
15 they would be showering and he reported at this
16 point that he was sexually aroused to children
17 since age ten -- middle school aged children.
18 That he was fixated on that younger age and so he
19 had the ability working in physical education to
20 observe children in showers where he reported
21 being aroused, where he reported picking out
22 children of his victim type that were attractive
23 to him. He reported picking out vulnerable
24 children.

25 He would then place those children in

1 the front of the class where he would have greater
2 interaction with him then and be able to establish
3 a grooming type relationship for the purpose of
4 sexual activity. This sets the stage to move from
5 job-to-job where he could have a lot of access to
6 children.

7 Q Dr. Phenix, let me just ask you a
8 couple questions about this timeline that you've
9 put together.

10 The dates that you have, are those
11 exact dates or are they approximate dates?

12 A Those would be approximate dates.

13 Q The location -- what do you mean by
14 that?

15 A The location is what country he went
16 to, and furthermore in that location who was he
17 working with.

18 Q You've got the events part. Where did
19 you get the information that you included in this
20 chart under the events?

21 A I got the information from other
22 psychological evaluations for civil commitment,
23 from additional records in the discovery, from my
24 interview with Mr. Comstock and from writings that
25 he did while he was housed at Butner Federal

1 Correctional Institute.

2 Q Did you review his deposition?

3 A I did.

4 Q Is some of the information within this
5 chart that you're referring to from his testimony
6 in his deposition?

7 A Yes, it is.

8 Q For each event or several of them at
9 least there is a number outside the word victims.
10 What are you indicating there with respect to that
11 information?

12 A That would be how many victims he has
13 admitted to in the various locations.

14 Q If you could, Dr. Phenix, walk us
15 through, if you could, and summarize for us the
16 information that's on this chart and how it
17 relates to your diagnosis of pedophilia.

18 A I think that it's notable that in every
19 single job that Mr. Comstock had internationally
20 as well as in the United States that he molested
21 children who were in school or in proximity to him
22 in each one of those jobs as well as in each
23 period of time that he was doing ongoing graduate
24 work in various locations except for 1986 and 1987
25 when he was in Colorado as a counselor and he was

1 working in Dubai.

2 Other than that you will note that he
3 has a number of victims -- in many cases multiple
4 victims -- at each particular location.

5 Furthermore, something that is very
6 consistent in his work history and in his timeline
7 is that he was working with elementary school
8 children in every single work setting after his
9 first job in 1968 at Ohio State University.

10 Other incidents that would indicate
11 that he has pedophilia -- turning to page two of
12 this chronology -- would be the 1973 job in the
13 Teheran American School in Iran. In this school
14 he worked with children from fifth grade to eighth
15 grade. He acted as a coach. He admitted to five
16 victims during this time. As a matter of fact, he
17 was terminated from his job. While he was not
18 adjudicated for molesting boys he was caught
19 molesting boys.

20 He had arranged to take a group of 55
21 boys from the Teheran American School to India on
22 a vacation. He was one of the chaperones to these
23 boys and he admitted in his report at Butner to
24 fondling three of those boys while they were
25 asleep and one of them disclosed the molest and it

1 caused him to lose his job although he was not
2 adjudicated for that.

3 He left that job and he obtained a job
4 at the American School of the Haig in the
5 Netherlands -- a country that's known for their
6 liberal sexual attitudes. He was 33 years of age.

7 Q What does that mean -- liberal sexual
8 attitudes?

9 A In a country where they tolerate, for
10 example, and promote prostitution. It's
11 associated with a freer acceptance of sexuality.
12 At that time Mr. Comstock had reported that there
13 was a tolerance for sexual activity between adults
14 and children, and that child pornography was
15 freely available in the Netherlands at that time
16 so it would be more accepting about that type of
17 sexual behavior.

18 Evidence of that would be that
19 Mr. Comstock became associated with what he called
20 a pedophile group. It was a group of men who had
21 sexual arousal to children and they formed a group
22 where they would meet once a month and discuss
23 issues surrounding sexual activity between adults
24 and children. That it was something that was
25 tolerated by authorities in the Netherlands at

1 that time.

2 One can see that he had several more
3 victims -- a total of seven admitted victims while
4 he was working in the Netherlands. He was again
5 teaching grade school and middle school aged
6 children.

7 We see his involvement in this
8 pedophile group repeated again. In the '70s he
9 said that he had joined NAMBLA -- as you
10 previously mentioned it's an organization -- North
11 American Man-Boy Love Association -- that promotes
12 sexual activity between adults and children and
13 makes efforts to try to change and liberalize laws
14 to make that permissible.

15 In fact, when Mr. Comstock was arrested
16 in 2000 he had pamphlets from NAMBLA --

17 MS. GRAVES: Your Honor, we would
18 object at this time. This has reached a point
19 where it's going into information the source of
20 which we don't know.

21 THE COURT: I'll sustain the objection
22 and ask the government to lay a foundation.

23 BY MR. ROYSTER:

24 Q Dr. Phenix, you were talking about the
25 NAMBLA information. What documents or what did

1 you review that indicated that information was
2 found at his house?

3 A When he was arrested in 2000 subsequent
4 to a search warrant those were some of the
5 materials that were found by law enforcement that
6 he had in his apartment.

7 Q You mentioned his participation in this
8 organization in the Netherlands. Where did you
9 find that information?

10 A He self-reported that information.

11 Q To who?

12 A To me, to Dr. Demby.

13 Q Did he also talk about it in his
14 deposition?

15 A Yes, he did.

16 THE COURT: You may proceed.

17 MR. ROYSTER: Thank you, Judge.

18 BY MR. ROYSTER:

19 Q Dr. Phenix, moving on past the
20 Netherlands can you please continue on with your
21 timeline and how this supports your diagnosis of
22 pedophilia?

23 A Mr. Comstock left the Netherlands
24 because while he was there and on the trip to
25 India suffered a serious stroke as a young man.

1 He returned to the United States for therapy for
2 having had that stroke. This is notable because a
3 serious medical condition can change the course of
4 pedophilia. It can reduce a person's libido, it
5 can cause mobility problems in terms of seeking
6 children for sexual activity and it can cause
7 sexual dysfunction.

8 However, one can see through this
9 chronology that that did not happen for
10 Mr. Comstock. In fact, he went on to go to
11 graduate school in his recovery from his stroke
12 and he went to the University of Hawaii. For the
13 time that he was there which looks to be about a
14 year or two he reported yet again another victim
15 of child molestation but this time it was repeated
16 molestation once or twice a week with a
17 14-year-old boy over a period of time.

18 It's evident here that his stroke did
19 not cause a reduction in libido or sexual
20 dysfunction that would interfere with him
21 continuing to molest children and continuing to
22 express those symptoms of pedophilia.

23 Q How old was he at this time?

24 A About 39.

25 Q Where did he go after his work in

1 Hawaii?

2 A He went on to continue to work
3 internationally. He went to Lima, Peru where he
4 was a physical education teacher coaching sixth
5 through eighth grade. He continued to molest at
6 least one child that he admitted to.

7 His father died and he returned to
8 Arkansas in 1995.

9 He went to graduate school again and he
10 continued in graduate school to molest children,
11 so we do not see any decrease in his sexual
12 arousal to prepubescent children at this time.

13 Q You said he returned to Arkansas in
14 1995. Is that what you meant -- looking when he
15 left Lima, Peru?

16 A That would be 1984. When he left Lima,
17 Peru his father had died and he engaged in
18 graduate work in Arkansas and got a job as an
19 elementary school counselor in Arkansas. That job
20 terminated as a result of an investigation by the
21 FBI into his being involved in child pornography.

22 A friend of his -- an acquaintance of
23 his in the Netherlands that he knew when he lived
24 there had been arrested and investigated by the
25 FBI for child pornography -- making it or trading

1 it -- and they found Mr. Comstock's
2 identification, name, address and had contacted
3 him regarding being involved in that child
4 pornography. He was sent to be evaluated by a
5 psychologist and that did not result in any
6 charges for him.

7 Nonetheless, Mr. Comstock has admitted
8 throughout his adult life to using child
9 pornography for stimulation for his deviant sexual
10 arousal to children.

11 Q Where did he go after he lost his job
12 in Arkansas?

13 A He lost his job as a result of that
14 investigation and he went to Colorado where he
15 worked as a counselor and then on to Dubai where
16 he worked as a guidance counselor for children
17 Kindergarten through eighth grade.

18 Q He's got this one victim in 1985 that
19 you've listed and then in '86 and '87 he hasn't
20 reported any victims. Does that break the
21 six-month period? He's got two years it looks
22 like where he doesn't have a reported victim.

23 A No. In fact, looking at the length of
24 time for expressing pedophilia you would include
25 the very first indications of that. That would be

1 for him age 15 when he molested a nine year old.
2 He had deviant arousal before then, but that would
3 be the first expressions of that through the last
4 time that he committed sexual molest to children
5 or experienced those sexual fantasies. That would
6 be at the very least 2008 when he was collecting
7 child images.

8 Q Your chart indicates he returns from
9 Dubai to Colorado.

10 A That's correct.

11 In Colorado he again worked as a
12 guidance counselor for elementary and middle
13 school. He reported having a victim in 1989 and
14 then he moved on to a job in the Philippines where
15 he worked at the International School of Manila.
16 The Philippines is a country that he had become
17 familiar with.

18 At this point he was 49 years of age,
19 but he had previously reported going to the
20 Philippines to engage in sexual activity with
21 child sex workers which are present in the
22 Philippines and children that you can access
23 through essentially pimps who like child
24 prostitutes that are tolerated to a certain
25 extent. He knew this because he had gone there

1 for three years in a row on vocation at age 35 --
2 not in a row -- age 37 and age 39. He had gone to
3 the Philippines for the purpose of engaging in
4 sexual activity with children on vacation and he
5 amassed what he reported to be 15 victims while he
6 was on vacation in the Philippines; and then at
7 age 49 went back there to work for several years
8 and amassed another 13 victims of child molest
9 while he was working there as a guidance
10 counselor.

11 Q Where did you find the information
12 about his vacations?

13 A He reported that to Dr. Hernandez at
14 Butner. Dr. Hernandez was conducting an
15 evaluation and asked him to write down all of his
16 victims and he made a list of 78 victims out of
17 the 101 that he could recall.

18 Q Let me ask you to flip over in your
19 notebook to Exhibit 12.

20 My first question for you is if you
21 recognize Exhibit 12?

22 A Yes, I do.

23 Q What is it?

24 A This is a Federal Bureau of Prisons'
25 psychology data system or what we would call

1 progress note. It's written by Dr. Hernandez.

2 This is the progress note that indicates he asked
3 him to produce a handwritten victim list where he
4 acknowledged those 78 victims.

5 Q Flip over to the second page. What is
6 the second page of Exhibit 12?

7 A That would be the summary of where he
8 worked or was on vacation or the location where he
9 had all of the 78 victims; the sexual activity
10 that he engaged in with the victims and what
11 relationship the victims were to him.

12 Q What's your understanding of who wrote
13 this?

14 A Mr. Comstock wrote this for Dr.
15 Hernandez.

16 Q Do you know what the information at the
17 top of each column represents?

18 A Yes.

19 Q How do you know it?

20 A He talked about it in his deposition.

21 Q Just so we're all clear, his deposition
22 testimony is that something you generally rely on
23 in forming your opinion as to sexual dangerousness
24 of a person?

25 A Yes.

1 Q What is your understanding based on his
2 testimony about what those columns mean up at the
3 top?

4 A At the top there would be the location
5 and then the place and then how many victims, how
6 many victims involved with anal penetration or
7 intercourse.

8 I'm not clear on the next column.

9 The column after that would be the
10 relationship and that would be a student, an
11 athlete, a counsel lead; in other words, he was
12 their counselor. Then a column that says O and
13 that would be other such as a child sex worker.

14 I'm sorry, after anal the column would
15 be female.

16 Q You mentioned vacations. Does he
17 indicate that on this chart?

18 A Yes. If you go about halfway down the
19 place for location which is the second column
20 after age you can see all of the locations I've
21 discussed and then you can see
22 VAC-Philippines-Thailand-Portugal-Canary Islands
23 and India. These would be his vacations.

24 Q Dr. Phenix, going back to the
25 Philippines was he ultimately terminated from his

1 job there in the Philippines?

2 A Yes.

3 He was terminated from his job in 1998
4 so he was there several years. He was terminated
5 for having what was termed an unnatural
6 relationship with a boy that he had adopted. By
7 1998 this boy was 17 years old. Mr. Comstock met
8 him. He was an underprivileged child in foster
9 care. According to Mr. Comstock he was going to
10 be sent to some type of boys' facility and
11 Mr. Comstock took him into his home. He had been
12 already having sexual activity with this boy. He
13 was 11.

14 Q What were the circumstances under which
15 they met initially?

16 A He reported that he was a child sex
17 worker. He was having sex with strangers on the
18 street. He was 11 years old. He met him through
19 his pimp.

20 He took him into his home and engaged
21 in sex with this boy at age 11. It's unclear in
22 the records of a month to a year of sexual
23 activity.

24 It's notable that the boy would then go
25 through puberty. The sexual activity ended.

1 Mr. Comstock's would not be sexually aroused to a
2 boy going through puberty and gaining secondary
3 sexual characteristics so the sexual activity
4 stopped. Mr. Comstock essentially raised this boy
5 until he left the Philippines.

6 Q Did you talk to him about this
7 relationship in your interview?

8 A Yes.

9 Q Did he tell you how long the sex went
10 on with Michael?

11 A He said the sex went on prior to moving
12 in with him during a period of time, but for a
13 month after the boy moved in with him.

14 Q You indicated that when he went into
15 puberty the sexual relationships stopped. Is that
16 your opinion, are you speculating or is that what
17 he told you?

18 A No, he reported that. He's reported an
19 aversion to body hair and so that would be a
20 secondary sexual characteristic of a boy going
21 through puberty and Mr. Comstock would no longer
22 be aroused to him.

23 Q Where did he go after he was terminated
24 from his job in the Philippines?

25 A He then came back to the United States

1 and began working at the Lakin School District in
2 Kansas and ultimately two years later was arrested
3 for the instant offense.

4 Q If you could, Dr. Phenix, tell the
5 Court about the offenses and how that factors into
6 your diagnosis that he meets the criteria for
7 pedophilia.

8 A These offenses involve four boys. The
9 first set of offenses were perpetrated against six
10 and seven year old brothers.

11 One of the ways that Mr. Comstock would
12 access children is to -- when he was arrested he
13 had permission slips for children to come to his
14 apartment and to use his computer. He had these
15 boys in his apartment several times to come over
16 and play computer games. During that time he
17 repeatedly fondled the six-year-old boy between
18 November of 1999 and February of 2000 and he
19 fondled the seven-year-old boy's genitals
20 underneath his shorts two to three times.

21 He also befriended nine and
22 ten-year-old boys. He was again working at the
23 local recreation center. He was a coach coaching
24 and he had the boys sign up to play sports. He
25 had befriended the boys' mother. While one of the

1 boys was at a basketball game he had the
2 nine-year-old boy -- the younger boy -- at his
3 house caring for the child with the mother's
4 permission and he put his hands in the front
5 pocket of the boy and fondled his genitals. He
6 had his arms around him and rubbed his body and
7 told the boy that he loved him. He asked the boy
8 not to tell and said he would get in trouble.

9 He then picked up the ten-year-old boy
10 from the basketball game and in the car he fondled
11 the boy's genitals.

12 Q What else happened during the course of
13 the investigation of those instances of child
14 molestation that was relevant to your diagnosis of
15 pedophilia?

16 A With the execution of the search
17 warrant what was found was typical materials that
18 one would see for individuals aroused to
19 prepubescent children. These are what we would
20 call adult/child sexual materials that are used
21 for erotic stimulation to children. Most obvious
22 of that would be child pornography.

23 In this search there were 34 pictures
24 of nude boys that were clearly prepubescent boys.
25 There were pictures of these boys not only nude

1 but engaging in sexual activity with penetration,
2 sexual activity with each other. This would be
3 used for the purpose of masturbation to these
4 pictures. They would be sexual erotica.

5 He was found with, as I mentioned
6 before, a packet of NAMBLA materials. He was
7 found with a book called Loving Sander. This is a
8 story of an adult male engaging in sexual activity
9 with a boy. It's read for the purpose of erotic
10 stimulation.

11 He was also found with a book on
12 boarding schools for boys ages eight to 12. That
13 was likely used for the purpose of finding those
14 jobs -- many of which he had sought out in
15 international locations where he could live with
16 boys.

17 He had a questionnaire -- are you in
18 puberty. These are the kinds of things you give
19 to boys to start a conversation about sexual
20 activity as a grooming technique if you will.

21 He had typed permission slips that
22 would allow parents to sign for their children to
23 come to his home to use the computer to access
24 children.

25 These are all materials consistent with

1 someone that has pedophilia.

2 Q You mentioned before that there were
3 four areas that you looked at in your diagnosis
4 and one of those was the career choices. What are
5 the other three?

6 A Essentially I looked at all areas of
7 his life; his career, his vacations and recreation
8 and that's what I discussed in terms of where did
9 he decide to go on vacations. He did take some
10 vacations internationally with a friend, but he
11 took five known trips for the purpose of engaging
12 in sexual activity with boys -- Philippines,
13 Thailand, Portugal, Canary Islands, India --
14 victims in all of those area.

15 The third area that confirmed
16 pedophilia or supported that diagnosis was his
17 collecting and using child pornography throughout
18 his adult life and those types of erotic material
19 I've already discussed.

20 Finally it would be his own admissions
21 to having pedophilia. The number of victims --
22 which is quite extraordinary -- about a hundred
23 victims that he's admitted to -- his own admission
24 that he is aversive to any type of body hair
25 indicated only sexual arousal to prepubescent

1 children.

2 His description of the type of boy that
3 he's aroused to. A thin boy between age 10 and
4 14 -- a blonde boy. He has a victim type that's
5 attractive to him.

6 His own report at age ten he became
7 fixated on boys and that that never changed
8 throughout his life. Also his admission to one of
9 the criteria or symptoms of pedophilia --
10 masturbation to prepubescent boys he's admitted to
11 throughout his life. He has essentially a classic
12 diagnosis of pedophilia.

13 Q Dr. Phenix, are you aware of any
14 instances while Mr. Comstock has been in federal
15 custody where he has been found with pictures of
16 children?

17 A Yes.

18 Q Can you tell the Court about that?

19 A We know that his pedophilia has been
20 persistent, long standing and enduring throughout
21 his life. That's not always the case with
22 pedophilia. It can wax and wane. That's not the
23 case for Mr. Comstock.

24 In fact, as recently as June of 2008
25 Mr. Comstock was 66 years old. At this time he

1 had a shake-down of his room, a search of his cell
2 and they found 93 images of boys. He had cut them
3 out from catalogs. They were his victim type and
4 victim age range.

5 About a third of them were only
6 partially dressed. One of them was nude -- a full
7 frontal picture of a nude boy.

8 He had a catalog called Culture Kids.
9 These catalogs are allowed in the institution.
10 Child pornography obviously is not but these
11 catalogs are.

12 THE COURT: What was the name of it?

13 THE WITNESS: Culture Kids. They had
14 lots of pictures of kids and toys and that type of
15 thing.

16 He also had newspaper cutouts of
17 articles and the articles had to do with nudist
18 colonies and also Raising Boy.

19 When child pornography is not available
20 individuals who masturbate to child stimuli and
21 images will cut them out of catalogs and make
22 their own book, if you will, or collection of
23 erotic stimuli to the age group to which they're
24 attracted and that's exactly what Mr. Comstock did
25 only a few years ago.

1 BY MR. ROYSTER:

2 Q He wasn't convicted for having child
3 porn as a result of that, was he?

4 A No. That would not qualified as child
5 pornography.

6 Q Does that affect your analysis with
7 respect to his diagnosis of pedophilia or sexual
8 dangerousness in any way that he wasn't convicted
9 of having child porn in 2008?

10 A No, not at all. He wasn't convicted of
11 almost all of his victims of child molest. This
12 is a clinical decision on my part.

13 Q Dr. Phenix, does pedophilia affect a
14 person's emotional or volitional control?

15 A Yes.

16 Q Can you tell the Court how it does?

17 A It affects each individual differently.
18 There are individuals who have pedophilia who can
19 exercise very good controls over their behavior so
20 throughout their life or at various times in their
21 life they experience deviant, abnormal sexual
22 arousalment to children and yet they manage it by
23 finding ways to avoid, for example, a high-risk
24 situation by participating in sex offender
25 treatment that provides the individual with

1 techniques and skills to avoid reoffense and
2 sometimes simply making the decision that they
3 choose not to do that. That they will not act out
4 even though they experience sexual fantasies and
5 urges that are abnormal.

6 On the other hand there are some
7 individuals with pedophilia all along that
8 continuum from having good control to having very
9 poor control over their behavior or what I would
10 consider serious difficulty with volition.

11 Q Does pedophilia make a person more
12 likely to commit a sex offense?

13 A I believe that it does.

14 Q Why?

15 A It fuels these fantasies and urges. If
16 you don't have pedophilia you don't experience
17 those kind of fantasies and urges and it's easier
18 to avoid that leading to some type of reoffense.

19 Q Dr. Phenix, so much time has passed
20 since his conviction in 2000. How can you say
21 that now currently as he sits here today that
22 Mr. Comstock suffers from pedophilia?

23 A I think that there's a number of
24 factors that lead me to strongly believe he still
25 suffers from pedophilia. For one he says he does.

1 Number two, pedophilia is -- you can think of it
2 like a sexual orientation. It's life-long,
3 enduring and pervasive.

4 As an individual realizes in their
5 sexual development that they have some sexual
6 attraction perhaps to the opposite sex or the same
7 sex and then they act out on that throughout their
8 life -- they don't decide I decided to change my
9 sexuality -- you recognize you have a certain
10 sexual orientation and you can act on that or not
11 act on that and that's what pedophilia is. It's a
12 sexual orientation. You can't just stop it but
13 you can manage it throughout your lifetime. There
14 is no question in my mind that Mr. Comstock
15 continues to have pedophilia.

16 Q You said you can't stop it, but you can
17 manage it. Is that supported by the research in
18 your field?

19 A Yes, it is. That's why the focus of
20 sex offender treatment is not curing it; it's
21 managing it. Giving the person the skills and
22 abilities to avoid reoffending.

23 Q Can pedophilia go into remission?

24 A No, you can't conclude that pedophilia
25 has gone into remission. For example, a person

1 with pedophilia molests children and then goes to
2 prison for ten years and you don't see him
3 molesting children. Of course there aren't any
4 children in the proximity. There's a ten-year
5 period of time where you don't see him molesting
6 children and then he's released from prison and he
7 starts molesting children again. That's because
8 the individual -- pedophilia is life-long -- the
9 individual can reinforce that and we don't know
10 that.

11 What's happening in prison is that he's
12 sexually aroused to children so he's fantasizing
13 about the children on the television but you don't
14 know that he's having those sexual fantasies so he
15 masturbates to those sexual fantasies of children
16 or something from the magazines.

17 We don't know that. It's all in his
18 mind's eye what's happening and so it's not a
19 surprise that ten years later when the person gets
20 out of prison they have continued over those years
21 to reinforce this deviant sexual arousal and so
22 it's no surprise they start molesting again. We
23 can't judge a person to be in remission because
24 you simply can't see what's going on.

25 Q Is impulsivity a symptom of pedophilia?

12 A The basis for that would be his
13 expression of symptoms consistent with depression
14 over his incarceration. I did not see those
15 symptoms when he was out in the community, but
16 since he's been incarcerated he's had low energy,
17 poor appetite, distractibility, feeling helpless
18 and hopeless and feeling sad and feeling down. He
19 has received antidepressant medication fairly
20 consistently throughout his incarceration in the
21 BOP.

23 A No, it won't be associated with an
24 increased or decreased risk of sexual reoffense.

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1 about your opinion that he would have serious
2 difficulty refraining from sexually violent
3 conduct or child molestation if released.

4 First of all, what do you understand
5 this to mean?

6 A Serious difficulty with volition would
7 be poor control over his behavior.

8 Q How did you go about determining that
9 he would have serious difficulty refraining?

10 A In a number of ways. Looking both at
11 his admissions and also examining his behaviors in
12 the past and currently.

13 Q Is there anything that you referred to
14 in understanding what serious difficulty
15 refraining meant under the law?

16 A Yes.

17 There is a definition of serious
18 difficulty refraining from sexually violent
19 conduct or child molestation contained in the Code
20 of Federal Regulation.

21 Q Did you refer to that in coming to your
22 conclusion that he would have serious difficulty
23 refraining?

24 A Yes, I did.

25 Q We've talked a little bit about

1 volitional control. Does he have serious
2 difficulty with volitional control?

3 A Yes.

4 Q Why do you say that?

5 A For a number of reasons. First of all
6 I would say because of the extraordinary number of
7 victims that he has had over time and the
8 frequency in which he has molested children.

9 The Federal Code of Regulation
10 indicates that repeated sexual contact with
11 children would indicate serious difficulty with
12 volition and he has experienced that over 30
13 years.

14 Q When you interviewed him did you ask
15 him how many victims he had?

16 A Yes.

17 Q Why?

18 A I wanted to see if he had a consistent
19 report of victims, and also it's pertinent to my
20 opinion of pedophilia and the risk to reoffend.

21 Q What did he tell you about the number
22 of victims he had?

23 A He had seven victims, and I believe
24 three of them were of molest.

25 Q Do you believe him?

1 A No.

2 Q Why?

3 A Because in the records he had already
4 admitted to 78 victims. In treatment he admitted
5 to 101 victims.

6 He also provided very detailed
7 documentation of the 78 victims including the
8 location, what his feelings were at the time that
9 he engaged in sexual activity with the boys, what
10 he did with the boys sexually. It was very
11 detailed.

12 Q What do you do with that information
13 when he tells you something that's so different
14 than what you've read? How did that factor into
15 your evaluation?

16 A I understand at times he lies and that
17 is not atypical in a forensic setting.

18 Q Dr. Phenix, does a person have to be
19 impulsive in order to find that they have a
20 volitional impairment?

21 A No, they don't have to be.

22 Q When I asked you that about
23 impulsiveness what do you understand that to mean?

24 A That would be a person who acts without
25 thinking. Doesn't think through the consequences

1 of his behavior.

2 Q Why do you not think that that's a
3 necessary component of volitional impairment?

4 A That's one component. Volitional
5 impairment to me is more complex than that. I
6 also see volitional impairment on a continuum.
7 That continuum would be a person who is highly
8 impulsive, doesn't ever think about the
9 consequences of their behavior all the way to the
10 type of sex offender who is very methodical; who
11 plans, who organizes, who grooms his victims. A
12 person can have serious difficulty with their
13 volition anywhere on that continuum.

14 I believe that almost all -- if not
15 all -- offenders make a choice to sex offend.
16 They make a decision. That doesn't mean that they
17 have good volitional control. It's terrible
18 volitional control to make a decision to act out
19 on your deviant sexual arousal. It can have many
20 different expressions -- serious difficulty with
21 volition.

22 Q So it's the fact that the person
23 actually commits the act that is the volitional
24 impairment, not necessarily why they commit it.

25 A Right.

1 Q How does his lack of impulsivity affect
2 his risk to reoffend?

3 A When Mr. Comstock offends against
4 children he does so with extensive planning and
5 sophistication.

6 He educated himself in a career so he
7 could molest children. He worked in places to
8 gain access to children. He moved to places where
9 he knew he would have greater access to his
10 victims. He reported choosing the most attractive
11 and vulnerable victims so he tried to see what the
12 family structure was like. If it would be easier
13 to work his way into the family to gain access to
14 those children so that he could have the children
15 spend the night with him he would get to know the
16 parents for the purposes of being able to have
17 proximity to their children.

18 His planning and organization and
19 sophistication were extensive, and they are an
20 expression of his serious difficulty with volition
21 that he would go to such extent to commit this
22 illegal criminal behavior.

23 Q Dr. Phenix, based on your experience,
24 training and education do you have an opinion as
25 to whether that planning and premeditation makes

1 him more or less dangerous than someone who is
2 just acting on impulse?

3 A It's hard to say if it's more or less.
4 For example, a person acting on impulse may try to
5 snatch a child every other day. You just have to
6 look at each individual. What I can say is that
7 the way he has planned and executed these molests
8 demonstrates serious difficulty with his volition.

9 Q Are you aware or familiar with the
10 Barratt Impulsivity Scale?

11 A I have seen it before. I have never
12 used it.

13 Q You didn't use it in this case?

14 A No.

15 Q Why not?

16 A That scale has no validity for
17 understanding serious difficulty with volition
18 pursuant to the civil commitment statutes. It has
19 no validity for predicting future sexual
20 reoffense. You use psychological testing to
21 answer a referral question. There's no referral
22 question here in terms of assessing his
23 impulsivity. I'm to assess the whole continuum of
24 serious difficulty with his volition.

25 Also generally in terms of impulsive

1 behavior you can look at that to see how a person
2 acts. Do they act in a planned way or do they
3 have a pattern of acting without considering the
4 consequences of their behavior.

5 Q Are you aware of any research regarding
6 impulsivity indicating a serious difficulty
7 refraining from sexual reoffense?

8 A No.

9 Q As part of your evaluation and
10 specifically with regard to the issue of serious
11 difficulty did you assess his risk to reoffend?

12 A Yes, I did.

13 Q How did you go about doing that?

14 A Well, I began by scoring well known and
15 accepted actuarial instruments that assess the
16 risk of future sexual reoffense commonly used in
17 this field.

18 I also scored an instrument that
19 examined what we call dynamic or changeable risk
20 factors -- the SRA-FV.

21 I then went on to examine any other
22 clinical or case specific factors that would
23 impact Mr. Comstock's risk to sexually reoffend.

24 Q What are some examples of the clinical
25 or case-specific factors that you considered?

1 A That would have to do, for example,
2 with medical conditions that might decrease the
3 individual's risk of future sexual reoffense like
4 mobility problems, chronic diseases, terminal
5 diseases. It would be statements about poor
6 volitional controls or statements that indicate
7 the person feels like they may go on to reoffend
8 and that type of thing.

9 Q Let's talk about the actuarials. First
10 of all why did you assess his risk to reoffend?

11 A I assessed his risk to reoffend to
12 answer the question as a result of a serious
13 mental illness, abnormality or disorder would he
14 have serious difficulty refraining from sexually
15 violent conduct or child molestation. In other
16 words, can he stop himself and what is the risk
17 that he can't stop himself and that he would
18 actually go on to do it.

19 Q Let's talk about actuarial instruments
20 for a minute. First, what is an actuarial
21 instrument?

22 A An actuarial instrument in this case is
23 a list of known risk factors for future sexual
24 reoffense that have been established in the
25 research that when present predict future sexual

1 reoffense.

2 Each of those risk factors contained in
3 an actuarial instrument are statistically weighted
4 for their contribution to sexual reoffense. Some
5 risk factors are stronger predictors than others
6 and we can determine statistical weights, we can
7 add up to get a total risk score that corresponds
8 to a relative level of risk like low, medium or
9 high and also what we would call an absolute risk
10 or a probability of sexual reoffense for the study
11 sample over a period of time of over five years or
12 ten years.

13 Q Are actuarials widely used by
14 professionals in your field for predicting risk of
15 sexual reoffense?

16 A Absolutely. They're almost always used
17 in sex offender risk assessments in my field, and
18 actuarials are used in many fields to assess risk.

19 For example, in getting car insurance
20 the car insurance company will score actuarials to
21 determine the risk that you pose to cost them
22 money. It's used in many different fields.

23 Q Dr. Phenix tell the Court, if you will,
24 how they are useful in these types of assessments.

25 A Actuarial instruments are developed

1 generally on very large samples of sex offenders
2 and generally they can provide us with an overall
3 level of risk for this large group of sex
4 offenders on which they were developed.

5 If the individual that you're
6 evaluating is similar to that group of sex
7 offenders then that can give you an idea of a
8 ballpark level of risk for the person you're
9 evaluating.

10 Q Can an actuarial instrument just by
11 itself tell us whether Mr. Comstock is going to
12 reoffend?

13 A No.

14 Q Why do you say that?

15 A An actuarial instrument doesn't tell
16 you whether a person will or will not reoffend.
17 It can't do that. It can provide a general
18 probability for the study sample. For example, in
19 this case I don't think Mr. Comstock is well
20 represented in the study sample.

21 For every individual you have to look
22 at case-specific factors rather than relying only
23 on an actuarial instrument. It's just one piece
24 of the risk assessment.

25 Q Do you think that's what you were being

1 asked to do in this case; to opine on whether he
2 will or will not reoffend?

3 A No, I was not.

4 Q What is your understanding as to what
5 you were asked to do with respect to his
6 reoffense?

7 A What's the probability of him
8 reoffending. For example, a measure of relative
9 risk -- is it low, medium, high.

10 Q What actuarials did you use in
11 assessing his risk?

12 A I used two actuarial instruments. I
13 used the Static-99 Revised and the Static-2002
14 Revised.

15 Q Why did you use those particular
16 instruments?

17 A These instruments were developed and
18 tested on the largest group of sex offenders. The
19 Static-99R is the most widely used actuarial
20 instrument internationally and it is the most
21 validated or tested instrument in the field.

22 Q What does that mean? How do you go
23 about testing or validating an actuarial?

24 A One would not use an actuarial
25 instrument unless it was cross-validated. What

1 that means is that the instrument is developed on
2 one group of sex offenders. Usually it predicts
3 pretty well for that group of sex offenders
4 because it was developed on them.

5 When you test that instrument on other
6 samples or groups of sex offenders sometimes the
7 predictive accuracy of the instrument will go down
8 and so you want to determine if the instrument
9 will be useful with all different types of sex
10 offenders, all different groups of sex offenders
11 so I have greater confidence that it will be
12 useful in evaluations that I'm conducting.

13 We then cross-validate the instrument
14 on as many different samples or groups of sex
15 offenders as you can to gain that greater
16 confidence that it can generalize the offender
17 you're evaluating.

18 Q Were you involved in the development of
19 the Static-99R?

20 A No.

21 Q Do you know how it was developed?

22 A Yes.

23 Q Can you tell the Court how that
24 particular instrument was developed?

25 A There were 24 different samples of sex

1 offenders -- actually ultimately 23 different
2 samples of sex offenders -- totaling about 8300
3 sex offenders who were released from various
4 prisons and forensic hospitals in the late '80s,
5 the 1990s and early 2000s.

6 The instrument was scored on those
7 individuals released to the community and then
8 data was collected as to which offenders
9 reoffended and which ones did not to calculate
10 then the ability of the instrument to identify
11 what offenders would go on to reoffend and what
12 offenders would not.

13 Q Were you involved in the development of
14 the Static-2002R?

15 A No.

16 Q Do you know how it was developed?

17 A It was developed in exactly the same
18 way but with a smaller sample of offenders.

19 Q Have these actuarial instruments that
20 you used in this case Dr. Phenix -- the Static-99R
21 and the Static-2002R -- have they been subject to
22 peer review?

23 A Yes, they have.

24 Q Do the actuarials give you a percentage
25 of whether he will reoffend?

1 A No. They give a probability of sexual
2 reoffense for each cutoff score on the instrument
3 for the study sample so it would be for those
4 8300 -- Static-99R for those 8300 sex offenders.
5 For each score on the instrument what actual
6 number or probability of reoffense for each cutoff
7 score, but that doesn't tell us the true
8 probability for Mr. Comstock.

9 Q Why not?

10 A Because Mr. Comstock was not in the
11 study sample so I would make a judgment as to
12 whether Mr. Comstock was similar to the offenders
13 in the study sample or dissimilar in terms of how
14 much I would rely on these actuarial instruments
15 in any given case.

16 Q Dr. Phenix, if you would take a look at
17 Exhibit 2 of your report -- pages 18 and 19. Do
18 you see that?

19 A Yes, I do.

20 Q At the bottom of page 18 and the top of
21 19 is this where you report your scoring of Mr.
22 Comstock for the Static-99R?

23 A Yes.

24 Q Could you just tell the Court or
25 summarize for the Court the different risk factors

1 that are considered with respect to this
2 instrument?

3 A Yes.

4 There are ten receptors on the
5 Static-99R. These are robust predictors that have
6 long been established in the field when present to
7 increase the risk of future sexual reoffense.

8 The first one has to do with the age of
9 the offender. We know that for large groups of
10 sex offenders that older sex offenders have
11 reduced risk to younger sex offenders.

12 There are four age categories
13 associated with a score on this item. Age 18 to
14 34 is a risk point of one. Age 35 to 39.9 is a
15 risk score of zero. Age 40 to 59.9 is a minus
16 risk score of minus one. 60 and over is a minus
17 three risk point.

18 The second item has to do with
19 statistically whether an offender has ever lived
20 in a two-year intimate relationship. That would
21 not be whether they have been married per se but
22 having lived in a two-year intimate relationship
23 consistently. In this case Mr. Comstock never had
24 so he receives a higher risk point of one.

25 The next two items -- index non-sexual

1 violence and prior non-sexual violence -- we know
2 that there are two constructs or factors that
3 predict future sexual reoffense. One has to do
4 with sexual deviancy and the other has to do with
5 criminality and non-sexual violence. We're
6 measuring both on this instrument.

7 This asks you was there a conviction
8 for non-sexual violence at the time of the most
9 recent sex offense -- that would be in 2000 -- in
10 the case of Mr. Comstock there was not so he gets
11 a zero -- and in his criminal history has there
12 ever been prior to the most recent sex offense a
13 conviction for non-sexual violence. Mr. Comstock
14 has no other criminal history and he would have a
15 zero on that item.

16 Item five is a measure of sexual
17 deviance. Does he have prior sex offenses. We
18 know that Mr. Comstock does, but the only thing
19 that you can code on this item is actual charges
20 and convictions for prior sex offense. He has had
21 no prior charges and convictions despite all of
22 those molestations in his past and therefore he
23 gets no risk point on this item and he gets a
24 zero.

25 Item number six is called prior

1 sentencing dates. That's an English term for
2 prior convictions. This is a criminality item and
3 you count up any convictions prior to the most
4 recent sex offense and if you have four or more
5 you get a risk point of one, and three or less you
6 get no risk point; you get a zero. Mr. Comstock
7 has no prior criminal history so he gets a zero on
8 this item.

9 Item seven asks are there any
10 convictions for non-contact sex offenses --
11 generally exhibitionism, voyeurism and child
12 pornography; although it could be others.
13 Mr. Comstock has a one on this because he has a
14 conviction for child pornography -- his federal
15 case.

16 There are three victim items. The
17 first of those is the relationship to the victim.
18 Offenders who have incest offenses have the lowest
19 risk. There's a risk point on this instrument for
20 unrelated victims and for stranger victims. Those
21 are increased risk of incest and each one would be
22 one risk point for Mr. Comstock because he has
23 both. In terms of stranger victims he many times
24 had sex with what he described as child sex
25 workers in various countries who were strangers.

1 All of his victims except for his brother and his
2 cousin were unrelated.

3 He also has a one for male victim.
4 Individuals who have male victims are at greater
5 risk than those with only female victims so he
6 gets one risk point there. Because Mr. Comstock
7 has a minus three as a result of his age -- 60 and
8 over -- he has only a score of two on the
9 Static-99.

10 Q Before we get into what all that means
11 let's flip over a couple pages to page 21. Are
12 you there?

13 A Yes.

14 Q That chart there, is that your scoring
15 summary for the Static-2002R?

16 A Yes, it is.

17 Q Why did you use a second instrument?

18 A I use multiple actuarial instruments
19 for the purpose of converging evidence. There is
20 no one best actuarial instrument. If there was an
21 actuarial instrument that had the highest
22 predictive accuracy I would use that but there's
23 not.

24 The three most widely accepted
25 actuarial instruments that we have all have equal

1 predictive accuracy and so there is no one best
2 instrument.

3 They do, however, have different items
4 so I have a greater review of the known risk
5 factors for future sexual reoffense using more
6 than one instrument. Furthermore, I have
7 converging evidence of risk.

8 For example, all three of the
9 instruments could say the person is high risk and
10 then I would have greater confidence they were
11 truly high risk.

12 If they're widely discrepant -- one
13 says low risk and another one says high risk --
14 then I have questions about the utility of those
15 instruments in making the risk prediction.

16 Q How do you know how to score them?

17 A Each one of these actuarial instruments
18 has coding rules that guide a clinician in how to
19 score each item.

20 Q Were you involved in the development of
21 the coding rules?

22 A Yes. I'm one of the authors of the
23 coding rules of the Static-99R, and I'm the lead
24 author of the coding rules for Static-2002R.

25 Q Do you get any royalties for testifying

1 about these instruments since you developed the
2 coding rules if you use them in your cases?

3 A I'm not paid for any of my role in
4 developing the coding rules for either instrument.

5 Q Do you train people on how to use these
6 instruments?

7 A Yes, sometimes.

8 Q Let's go back to the Static-2002R and
9 tell the Court why you scored it the way you did.

10 A The Static-2002R is conceptually
11 different than the Static-99R. The Static-99R is
12 simply a list of factors that are statistically
13 related to future sexual reoffense.

14 The Static-2002 was developed to make
15 conceptual sense. You can actually look at the
16 way the individual has scored to see where the
17 risk is coming from and that can be helpful, for
18 example, in a treatment setting so you know what
19 area to treat -- either criminality -- maybe
20 that's where the risk is coming from -- or sexual
21 deviance.

22 There are five categories of risk
23 areas. The first one is age and that's very
24 similar to Static-99.

25 The second category is persistence of

1 sex offending and there are three components to
2 that. Prior sentencing occasions for sex offenses
3 just like Static-99; has the person committed a
4 sex offense as a juvenile and as a adult -- that
5 would increase risk. Finally, how frequently do
6 they offend.

7 In this case for age Mr. Comstock got a
8 zero because that would be 60 and over -- low risk
9 related to that -- and because he was never
10 detected or at least adjudicated all of those
11 years he was offending -- he gets a zero on
12 persistence of offending. That would go up if
13 somebody had been caught repeatedly.

14 There's a category called deviant
15 sexual interest and that contains items having to
16 do with whether there's a non-contact sex offense
17 which we saw in Static-99 for male victim. That's
18 more deviant than a female victim so there's a one
19 there. Do they have two victims under the age of
20 12 with one of them unrelated. This picks up on
21 pedophilia -- sexual attraction toward children --
22 and Mr. Comstock had a one for each one of those
23 items so we see a total score of three for deviant
24 sexual interest.

25 We also have a category on relationship

1 to victim just like Static-99. Mr. Comstock gets
2 a point for unrelated and stranger victim.

3 Finally there is a cluster called
4 general criminality and Mr. Comstock doesn't get a
5 point for any of these items. He has not engaged
6 in general criminal activity in the past. All of
7 his criminal activity has been related to sexual
8 deviance. He has no prior involvement with the
9 criminal justice system, no prior sentencing
10 occasions for criminal behavior, he did not
11 violate community supervision, he did not have any
12 prior non-sexual violence offenses as we've
13 discussed in the past so he received a total score
14 of five on this instrument.

15 MR. ROYSTER: Judge, do you anticipate
16 a morning break?

17 THE COURT: I do. I was going to do it
18 around 11:00 but now is fine.

19
20 (Recess.)

21
22 BY MR. ROYSTER:

23 Q We left off talking about your scoring
24 of the Static-99R and the Static-2002R. Turn to
25 page 23 of your report.

1 Dr. Phenix, taking a look at page 23 of
2 your report -- do you see that?

3 A Yes.

4 Q What is that chart at the top of the
5 page?

6 A That is a summary of the findings in
7 regards to risk for both Static-99R and
8 Static-2002R.

9 Q What does that information tell us?

10 A It tells us measures of relative and
11 absolute risk. For example, it tells us the risk
12 category that he fell into for each of these
13 instruments. For Static-99R he received a total
14 score of two in the low/moderate range. In
15 Static-2002R he received a total score of five in
16 the moderate range.

17 Q What are the different ranges for those
18 instruments?

19 A The ranges for Static-99R is low,
20 low/moderate, moderate, moderate/high and high.
21 That would be the same for the Static-2002R.

22 Q What does the percentile column
23 indicate?

24 A The percentile allows us to compare the
25 results on the actuarial instrument for

1 Mr. Comstock to a large sample of what we consider
2 typical sex offenders. In reading a percentile
3 for Mr. Comstock's score of two on Static-99R he
4 received a percentile of 39.7 to 54.4. According
5 to this percentile he scored about in the middle
6 in terms of risk offenders between very low and
7 very high. 39.7 to 55.4 percent of offenders
8 scored at or below his score.

9 Q Is it the same thing for the
10 Static-2002R that 63.4 to 77 percent scored at or
11 below?

12 A That's right. He scored a bit higher
13 on Static-2002R than he did on Static-99R.

14 Q What are those two columns over there,
15 the five-year percent risk and the ten-year
16 percent risk?

17 A For the study sample in five years on
18 Static-99R individuals with a score of two
19 12.2 percent of them went on to be arrested or
20 convicted of a sex offense. In ten years for
21 Static-99R for the study sample 19.7 of the
22 offenders with a score of two went on to be
23 arrested or convicted of a new sex offense.

24 Q The same for the 2002-R?

25 A That's correct.

1 Q Do you regard these figures under the
2 five percent risk and the ten percent risk -- do
3 you regard those figures to be an accurate
4 estimate of Mr. Comstock's risk to reoffend?

5 A No.

6 Q Why?

7 A I didn't find the actuarials useful in
8 informing me about Mr. Comstock's risk. In rare
9 cases actually I think that the actuarials can be
10 misleading in terms of overall risk.

11 These values are as accurate as
12 Mr. Comstock being well represented in the study
13 sample, and I don't think that he is well
14 represented. I think there's very few offenders
15 in the study sample that have the history and
16 chronicity of his offending that have the number
17 of victims that he's had in his lifetime that have
18 committed that many offenses and never been
19 subject to detection and adjudication until age
20 58.

21 By age 60 if you look at age data very,
22 very few offenders go on to reoffend after age 60.
23 Mr. Comstock was 58 -- he was almost 60 when he
24 was detected with his first sex offense. He
25 simply is not well represented in the study

1 samples so I don't think that the actuarials in
2 this case are helpful to us in terms of assessing
3 his overall risk.

4 Q Dr. Phenix, did you calculate the
5 positive predictive value and negative predictive
6 value for these scores?

7 A No.

8 Q Do you know what that is?

9 A Yes.

10 Q What is it?

11 A That would be essentially the
12 percentage of times that you say someone is going
13 to reoffend and they do, or you say that they're
14 going to reoffend and they do not.

15 Q Surely that's an important analysis for
16 this case. Do you agree with that?

17 A It's not an important analysis for this
18 decision that I've made.

19 Q Why?

20 A Because I'm not making a decision about
21 whether Mr. Comstock will or will not go on to
22 reoffend. While you can calculate that from
23 various samples where you have the data of who
24 went on to reoffend, I'm simply offering an
25 opinion that there is a certain probability that

1 he will go on to reoffend.

2 Q Do the authors or the developers of
3 these actuarials recommend using those values to
4 opine on sexual dangerousness?

5 A No.

6 Q We've talked about the actuarials and
7 you mentioned that there were dynamic factors that
8 you also considered. How did you consider the
9 dynamic factors -- first what are dynamic factors?

10 A We have essentially two types of known
11 research drive risk factors for future sexual
12 reoffense.

13 The first type is static risk factors,
14 unchangeable historical risk factors, that
15 generally can't change except they can go up. If
16 you have a male victim you will always in your
17 life have a male victim. You can't remove that
18 from the risk assessment. If you have prior sex
19 offenses you will always have that. Those are
20 static risk factors.

21 We also have research drive dynamic or
22 changeable risk factors that when they are
23 decreased will decrease overall risk and these are
24 generally the targets of treatment for sex
25 offenders.

1 We have for years assessed dynamic or
2 changeable risk factors and now we have a more
3 structured scheme in which to do that.

4 Q What is that scheme?

5 A That's called the SRA-FV -- Structured
6 Risk Assessment-Forensic Version.

7 Q Who developed that?

8 A Dr. David Thornton and Dr. Ray Knight.

9 Q Were you involved in the development of
10 it at all?

11 A No.

12 Q What does it tell us?

13 A It tells us the extent of the presence
14 of dynamic or changeable risk factors that will
15 add what we'll call incremental validity to the
16 Static-99R and the Static-2002R.

17 In other words, is there any factors we
18 can consider that will add new information and
19 improve our ability to predict who will go on to
20 reoffend and that's what dynamic factors do; they
21 add new information to the static factors and give
22 us a better predictive accuracy overall in risk
23 assessment.

24 Q If you will take a look at page 24 and
25 the top of page 25 of your report, Dr. Phenix,

7 Q Is this essentially how you consider
8 the dynamic factors?

10 Q Walk us through, if you will, this
11 chart and how the scoring works.

18 The first cluster is having to do with
19 sexual interests. The first one being a sexual
20 preference for children. These static risk
21 factors do not fully account for sexual
22 preferences for children or pedophilia. There's
23 risk outside of the static risk factors that is
24 captured by that disorder. This is measured by
25 having three or more child victims. For a male

1 that would be under the age of 14. Of course we
2 know that he has close to a hundred if not a
3 hundred child victims.

4 You can score a zero; meaning the
5 factor is absent completely. A one meaning there
6 is some indications of that factor, or a two
7 meaning that that factor meets the operational
8 definition in the coding rules. He has a two on
9 sexual preference for children.

10 Sexualized violence is defined as
11 sexual arousal to the forced aspects of sexual
12 activity commonly called sexual status zone. The
13 pain, the humiliation, the mere force itself
14 during sexual activity would be arousing. That is
15 not the case for Mr. Comstock. That is not
16 present. He has a score of zero.

17 Sexual preoccupation has long been
18 established as a dynamic or a changeable risk
19 factor. It's present much more often in
20 individuals who commit sex offenses and it's
21 generally defined as being preoccupied with
22 deviant sexual themes and arousal. Using
23 pornography, placing yourself in situations where
24 you are in the presence of children to seek
25 children for sex, going to strip bars, making

1 phone calls to telephone sex lines. In this case
2 designing your life around being able to access
3 children. I've already testified, I think to a
4 great extent, to the level of sexual preoccupation
5 that Mr. Comstock has had throughout his life up
6 until the current time in 2008 when he was found
7 to have deviant child stimuli.

8 Q How do you get the scoring to work?

9 A For sexual preoccupation he has a two
10 on narrow and broad sexual preoccupation each
11 defined operationally with a total score of four.

12 You've got to do a little math here so
13 it's divided by two and you get a total factor
14 score of two for sexual preoccupation.

15 You add up the factor scores and divide
16 it by three because there's three items to get a
17 domain score of 1.33. You're going to add the
18 domain scores to get a total score and that tells
19 you -- that total score will tell you the extent
20 of dynamic risk factors present.

21 THE COURT: For narrow and broad you
22 have two. That's the highest, zero to two?

23 THE WITNESS: Correct. That's the
24 highest for both of those.

25 For example, in broad sexual

1 preoccupation the frequency of seeking out child
2 victims would be a primary factor here. It's not
3 only the child pornography and the obsession with
4 finding children but the pattern and duration of
5 offending as well. It's measured on sexual
6 preoccupation. Some individuals with pedophilia
7 have one or two individuals their entire life.

8 THE COURT: And that score would be?

9 THE WITNESS: That score would be one
10 or zero.

11 BY MR. ROYSTER:

12 Q Dr. Phenix, the next domain is
13 relational style RSD. What does that mean?

14 A We know that factors having to do with
15 interpersonal relationships and the ability to
16 develop intimate relationships and sustain them in
17 a healthy way indicates reduced risk for sexual
18 recidivism.

19 We saw one factor that related to this
20 on Static-99 -- ever lived in an intimate
21 relationship for two years -- that's just a yes or
22 no. This actually isn't a repeat of that. This
23 looks at the quality of the relationship that the
24 person developed and it's a protective factor if
25 it's present.

1 Q What do you mean by protective factor?

2 A It lowers risk for sexual reoffense if
3 a person has the ability to establish and maintain
4 a relationship and it's a healthy relationship.

5 Q A couple of times today you've said we
6 know something to be the case. Who is we and how
7 do you know it?

8 A We would be the research in this field.
9 Individuals like myself rely on the research in
10 the field that establishes the risk factors that
11 we rely on.

12 We know that we have better predictive
13 accuracy if we rely on research derived risk
14 factors than relying on something like our
15 experience or something that's not in the
16 research -- not related to sexual reoffense in the
17 research.

18 Q Go ahead and tell us how you scored
19 this relational style domain.

20 A If Mr. Comstock had lived in an
21 established relationship that was not fraught with
22 difficulties, problems, infidelity, domestic
23 violence for two years he would have a zero, but
24 he has never had an adult relationship. He's not
25 ever had sex with an adult person. He's not

1 sexually aroused to adults by his own self-report
2 and so he received a two here. He cannot get his
3 emotional needs met by an appropriate adult
4 relationship and that increases his risk.

5 Q You mean an intimate relationship or
6 can it just be a familial relationship?

7 A It needs to be an intimate
8 relationship. Individuals who don't have the
9 skills to develop those relationships, who can't
10 maintain those relationships because of problems
11 that are created such as substance abuse,
12 infidelity, domestic violence they are at higher
13 risk generally because they don't have their
14 emotional needs met.

15 When Mr. Comstock looks to have his
16 adult intimate and emotional needs met he goes to
17 children to have that happen and that puts him at
18 higher risk.

19 Emotional congruence with children --
20 Mr. Comstock scored a two on this. It's also
21 called emotional identification with children.
22 Individuals with pedophilia may turn to children
23 just because they're sexually aroused to them just
24 to have sex and yet they are married; they have
25 adult relationships that are fulfilling to them;

18 About one of his victims he wrote to
19 Dr. Hernandez when asked about what his thoughts
20 were when he was molesting this child and he said
21 I love him as much as anyone could love. He needs
22 me and I need him. He described his feelings as
23 loving and caring and compassionate.

24 This indicates -- also Mr. Comstock's
25 statement -- that he looks to children for meeting

1 his emotional need and that is a two on this item
2 and it increases his risk of sexual reoffense.

3 The next item is what's called
4 grievance thinking. It's a style or way of
5 thinking feeling like you're persecuted by others.
6 A person who can't accept the views of other
7 people. You feel put upon all the time. You feel
8 sorry for yourself. People don't understand you.
9 They don't get you. It's a style of thinking that
10 is associated with an increased risk of sexual
11 reoffense primarily because you can't take
12 responsibility for what you've done.

13 Over the years in treatment and
14 actually in interviews with clinicians
15 Mr. Comstock has believed that he is persecuted
16 because of his sexual arousal to children. He
17 believes it should be justified, he believes it is
18 legitimate, he believes you can have a loving,
19 caring relationship between an adult man and a
20 prepubescent boy.

21 MS. GRAVES: Objection to what he
22 believes.

23 THE COURT: I think you started to lay
24 a foundation.

25 BY MR. ROYSTER:

1 Q What's your basis for saying that, that
2 he believes that?

3 A He reported those beliefs to Dr. Demby,
4 he reported those beliefs when he was in treatment
5 in the Department of Corrections in Kansas and
6 it's been consistent about his report. He even
7 reported that he thought it was prejudicial of the
8 DSM to have pedophilia be a mental disorder
9 because it wasn't; and the people that actually
10 harmed children were the police who interviewed
11 them like law enforcement, social workers who
12 interview children after they have been sexually
13 abused because he didn't believe the abuse
14 actually harmed them.

15 MS. GRAVES: Same objection, Your
16 Honor.

17 THE COURT: Overruled. She's
18 indicating what she has gained from reports.

19 THE WITNESS: He has had long-standing
20 feelings or long-standing evidence of grievance
21 thinking that he had been persecuted because of
22 his sexual arousal to children and he should not
23 have been.

24 He's also had writings since he's been
25 in custody since 2006 indicating he believes he's

1 a political prisoner and the like. He tends to
2 look outside of himself rather than internally
3 about the problems that he's experiencing.

4 BY MR. ROYSTER:

5 Q Just so the record is clear, Dr.
6 Phenix, these writings and this information this
7 is material that was sent to you to review in
8 preparation of your report and to conduct your
9 evaluation, is that right?

10 A Yes.

11 Q Can you give the Court an idea how many
12 pages of documents you reviewed as part of that?

13 A Certainly over 2600.

14 Q The relational interest domain total
15 score is 1.66, is that right?

16 A Yes.

17 Q How did you get there?

18 A The final component would be poorly
19 managed anger. If a person has grievance thinking
20 they may actually strike out against another
21 person if they feel put upon too much.

22 Mr. Comstock has never expressed poorly
23 managed anger in terms of aggression or violence
24 toward others so I gave him a two. You would add
25 the components of grievance thinking which would

1 be two total divided by two which is a one under a
2 factor score and if you add up all the factor
3 scores under relational style that would be a
4 total of five divided by three because there's
5 three factors equaling 1.66.

6 Q Why do you divide the grievance
7 thinking and the sexual preoccupation domains by
8 two and not the others?

9 A Because those are subcomponents.
10 There's two subcomponents, narrow and broad sexual
11 preoccupation so you divide the four by two and
12 there's two grievance thinking components --
13 internal grievance thinking and poorly managed
14 anger.

15 Q So it's not necessarily because one
16 deserves more weight than the other; it's just
17 because there are two components and you weight
18 the average.

19 A Yes.

20 Q What about the last domain?

21 A The last domain is called dysfunctional
22 coping. This is defined as a person's ability to
23 identify their problems, to generate reasonable
24 solutions to those problems and to execute those.
25 The ability of the person to think through the

1 consequences of their behavior. I gave
2 Mr. Comstock a two. This is a person who has had
3 a serious life-long problem that's affected every
4 arena of his life in a negative way. He did not
5 manage that over 30 years. He twice engaged in
6 therapy once for one day, another time for a very
7 brief period of time after he incurred a stroke.
8 Mostly about the trauma of experiencing the
9 stroke. He never determined or worked on a way to
10 stop himself from harming children over 30 years.

11 He went into treatment but was found in
12 the Kansas Department of Corrections -- he's
13 bright; having understood what he was taught in
14 treatment over 18 months -- but they believed he
15 would not use it because he had entrenched
16 attitudes that accepted and promoted sexual
17 activity with children so poor treatment at BOP.
18 He's not chosen to engage in treatment for the
19 serious life-long problem.

20 In fact, he's gone on to reinforce his
21 sexual deviance even in the most confined setting
22 by developing child images that he can use for
23 deviant sexual arousal as recently as a few years
24 ago.

25 I gave him a two for dysfunctional

1 coping which equates to -- divided by two it
2 equates to a one under the domain score and we
3 have a total domain score of 3.99 which is quite
4 high. It indicates a strong presence of dynamic
5 or changeable risk factors.

6 Q Do you use that score -- that 3.99 --
7 in any relation to the actuarials?

8 A Yes.

9 Q How?

10 A This is one way that guides us what the
11 probability is of sexual reoffense or what we call
12 the base rate of sexual reoffense for the cutoff
13 scores on those instruments.

14 There are different norms or sets of
15 probabilities for each of those instruments --
16 four different sets of probabilities -- routine
17 probabilities which are the lowest probabilities.

18 Preselected for treatment -- if an
19 individual has been preselected institutionally to
20 participate in treatment there's a set of norms
21 that can be used for those individuals.

22 What we call non-routine -- a
23 combination of preselected for treatment and high
24 risk norms.

25 The fourth group is the highest

1 probabilities -- the sexual reoffense -- and those
2 would be called the high risk norms and those were
3 the ones that I selected to use in this case.

4 They are associated with very high scores on the
5 SRA-FV. It guides which set of norms to choose.

6 Q Why did you choose the one with the
7 highest probabilities?

8 A There are cutoff scores for the SRA-FV
9 so as the score goes higher then you're advised to
10 use higher probabilities of sexual reoffense.

11 Because his score was in the high range
12 I would be advised then to select the high risk
13 norms that have higher risk probabilities. Those
14 would be the most accurate for Mr. Comstock.

15 Q Did you look at the criteria for each
16 of the norms to figure out which category to put
17 him in?

18 A I did, because these norms were
19 developed by criteria of what we call
20 preselection.

21 For example, routine offenders have not
22 been preselected for any special intervention in
23 prison. They just parole and go out and they
24 haven't had any type of preselection.

25 Some offenders, however, in most

1 jurisdictions or most departments of corrections
2 are preselected for sex offender treatment if you
3 have a sex offense.

4 However, in most departments of
5 corrections they don't have the funds to treat
6 every single sex offender. Generally the highest
7 risk sex offenders are selected out for treatment.

8 There's a set of probabilities for
9 reoffense that apply to those preselected for
10 treatment because they're higher risk than those
11 who were not preselected for treatment. Those
12 offenders were generally lower risk. When they go
13 out you would expect those preselected for
14 treatment to have higher recidivism or reoffense
15 rate.

16 Mr. Comstock was preselected for
17 treatment in the Department of Corrections in
18 Kansas and so I had an option of looking at
19 factors having to do with preselection to say
20 maybe I should use those probabilities because he
21 was preselected for treatment.

22 What we know is that the extent of
23 dynamic risk factors is going to be more important
24 than just factors of preselection. Because his
25 score was so high on SRA-FV -- a measure of

1 dynamic risk -- I would be more accurate if I
2 choose the base rates associated with the high
3 risk group rather than preselected for treatment.

4 Q You talked about this a little bit --
5 he's had sex offender treatment.

6 A Yes. He completed an 18-month program.

7 Q How does his completion of that
8 18-month program factor into your evaluation of
9 his risk?

10 A The program that he participated in was
11 a time limited program, it wasn't a success
12 limited program.

13 Ideally you would have a program where
14 the offender completed treatment when they had
15 sufficient treatment gains to reduce their risk.
16 Oftentimes in the Department of Corrections as in
17 this case the program ends after 18 months and
18 therefore you have to be careful to look at
19 treatment gains in a program like that because
20 some offenders will have essentially skated along,
21 they would not have worked very hard and yet they
22 didn't get kicked out of the program or terminated
23 so they end the program with few treatment gains;
24 whereas others may do very well and internalize
25 what they learn in treatment and be lower risk as

1 a result.

2 It was important to review the
3 treatment discharge report from the Kansas
4 Department of Corrections which described poor
5 treatment progress.

6 I believe that Mr. Comstock while he
7 learned what he could do to lower his risk that
8 they believed he would not use that to lower his
9 risk and there were concerns that he still held
10 some of those very entrenched attitudes that gave
11 him permission to go on to reoffend; that it
12 didn't harm children to do that. I did not
13 believe that his treatment participation lowers
14 his risk.

15 Q Flip over to Exhibit 14 in the notebook
16 that's at the witness table. Is that the
17 discharge summary that you were referring to a few
18 moments ago?

19 A Yes, it is.

20 That reports that although he has
21 learned how he offends, it is unlikely that he
22 will stop offending.

23 Q Where is that?

24 A On page three at the bottom.

25 Q Just for the record that's Bates

1 stamped at the bottom BOP COMS 1362.

2 Dr. Phenix, did you do any other
3 testing of Mr. Comstock other than what you have
4 already talked about?

5 A Yes.

6 I tested him on what's called the Hare
7 Psychopathy Checklist Revised.

8 Q Why did you do that?

9 A I did that because that is a
10 psychological test which can indicate with high
11 scores that a person is more likely to commit
12 non-sexual violence or sexual violence. I look at
13 it essentially as a risk factor if it had high
14 scores.

15 Q What was his score on that?

16 A His score on the PCLR was a total score
17 of 12.

18 Q Is that high?

19 A No, that's low.

20 Q How does that factor into your
21 assessment of his risk?

22 A It was not a risk factor that I
23 considered increases his risk. It's also not
24 protective of his risk, but it does not increase
25 his risk. It's fairly common in individuals who

1 commit child molest to have low scores on the PCLR
2 because they don't generally have a propensity to
3 non-sexual violence or violence offending as much
4 as individuals, for example, who commit rape.

5 Q You talked about protective risk
6 factors and that, I believe, was kind of the third
7 part of your assessment of his risk -- kind of
8 other factors, is that right?

9 A Yes.

10 Q What are the protective risk factors
11 that you considered?

12 A Risk factors that can reduce risk would
13 first of all be time free in the community after
14 offending.

15 We know that sex offenders who were
16 released into the community in five to ten years
17 and they have no new offenses have about half the
18 risk of what the actuarial indicates when they're
19 released to the community. That can be
20 protective. That's not present for Mr. Comstock
21 because he hasn't been released after he's
22 offended.

23 The second has to do with having less
24 time when you look at longevity due to age or due
25 to illness. That may well be the case for

1 Mr. Comstock who does have a number of chronic
2 diseases. They're currently controlled with
3 medication. It's difficult for me to estimate
4 longevity for Mr. Comstock, but he may have
5 certainly less than ten years on his life. I just
6 don't know that.

7 The third factor would be very advanced
8 age. Generally we think of very advanced age as
9 being over 70 when perhaps the actuarial
10 instruments don't fully account for age.

11 Q Let's talk about his medical condition
12 or his longevity. What's your understanding of
13 his current medical condition?

14 A He had a stroke as a very young man at
15 34. That was due to high blood pressure which he
16 still has. It's my understanding it is being
17 controlled medically. He had a mini-stroke since
18 he's been incarcerated. He had a myocardial
19 infarction or heart attack while he was
20 incarcerated in 2006 with cardiovascular bypass
21 surgery. He has diabetes. He most recently had
22 prostate cancer with radiation.

23 Q Clearly he has a lot going on.

24 A Yes. He has a number of chronic
25 medical conditions.

1 Q How specifically does that factor into
2 your assessment of his risk? Would you
3 characterize that as a poor medical condition?

4 A I would just say that it's a number of
5 medical conditions that could potentially affect
6 his libido, his energy, his sexual interest, his
7 sexual arousal. It can cause erectile
8 dysfunction. Everyone is different in terms of
9 how these disorders affect a person.

10 Q For his age is that a protected factor
11 for him? You said generally you think of it as 70
12 and over. He's 69 years old, right?

13 A Yes. His age is clearly a protective
14 factor. It's factored in with a large reduction
15 in risk on Static-99R and Static-2002R.

16 I consider that he is lower risk today
17 at this age than he was when he was a younger man.
18 On the other hand with full knowledge of the
19 reduction and recidivism with age I still find him
20 to be a high risk offender.

21 Q You indicated earlier you've done about
22 350 evaluations. How many of those evaluations
23 have been of a person over the age of 65?

24 A A few of those evaluations. Maybe 20,
25 30, less. I don't know.

1 Q Have you determined that all of them
2 met the criteria for commitment?

3 A No, generally they do not meet the
4 criteria for commitment.

5 Q When you interviewed Mr. Comstock did
6 you ask him why he was not sexually dangerous or
7 wouldn't reoffend?

8 A Yes, I did ask him why.

9 Q What did he tell you?

10 A First of all he reported to me that he
11 now had lower libido and essentially no sexual
12 interest in children. That was the first one.

13 He told me that he was deterred by
14 prison. This was the first time he had been in
15 prison and he didn't like prison and he didn't
16 want to go back to prison.

17 He said that he now understands that
18 sexual activity between an adult and a child is
19 harmful to the child.

20 He also expressed that he has had
21 volitional controls in the past and he can
22 exercise them again in the future.

23 Q How did those four things factor into
24 your evaluation or assessment of his risk?

25 A In terms of his libido and his age

1 generally that's a very strong consideration for
2 me given the current research. It's highly
3 unusual for someone at age 58 to be continuing to
4 design their life around seeking out and molesting
5 children.

6 As I said, there is a significant drop
7 to about three or four percent in groups of sex
8 offenders who are 60 and over in terms of
9 reoffending over five years. That's the age where
10 Mr. Comstock offended.

11 Furthermore, while incarcerated only a
12 few years ago in 2008 he was found to have put
13 considerable effort into collecting child stimuli.
14 It's evident to me that not only does he have
15 libido in 2008 but it's strong enough that he is
16 continuing to likely masturbate and reinforce his
17 deviant sexual arousal with his collection of
18 child images.

19 He's different than other aging
20 offenders whose libido truly is reduced in time so
21 that's how I considered his self-report that age
22 and libido is reduced.

23 In terms of his adversity to being in
24 prison I think that he may well want to stop
25 offending against children because he doesn't want

1 to go to prison. That's legitimate if I believe
2 that. The problem is I don't think he can stop
3 himself even though prison is looming over his
4 head. I think his drive emotionally to be with
5 children, physically to be with children remains
6 very strong for him. Despite the consequences
7 that he will seek out children.

8 He reports that he thinks now that sex
9 is harmful to children and that would help him to
10 stop from offending. I don't believe that. I
11 think that he has learned what to say. He knows
12 what's socially acceptable to say. He's a bright
13 man, he's manipulative and he's clever. He's been
14 through treatment where he learns to talk the
15 talk, but I think fundamentally his attitudes are
16 that it's not harmful to children and it can be a
17 loving relationship and that he will flip back to
18 those attitudes which are permission givers to
19 sexually offending.

20 Finally he reported he had behavioral
21 controls because he did not offend in the
22 Netherlands. If we look at the timeline I made
23 you will see that there are seven victims in the
24 Netherlands and that throughout his life there's
25 no significant period of time where he exhibited

1 volitional controls and even institutionally in
2 2008 he could not exhibit volitional controls.

3 Q Dr. Phenix, does he have a volitional
4 impairment that results from his pedophilia?

5 A Yes, he does.

6 Q Why do you say that?

7 A For a number of reasons, some of those
8 which I discussed.

9 Volitional impairment can be measured
10 by the frequency and duration of his offending.
11 He's offended ever since he was age 15 to age 58
12 and after that collected deviant stimuli. He has
13 a huge number of victims over that period of time.
14 No indication after any of them that he wanted to
15 stop from offending.

16 He was terminated from two of his jobs.
17 One time for molesting and another time for being
18 involved in child pornography. Those incidents
19 did not stop him from going on to molest children.

20 He has engaged in a significant risky
21 behavior and the risk hasn't stopped him from
22 child molesting.

23 He reported the number of times that he
24 had child pornography collections and he destroyed
25 them because it was too risky to have them. He

1 went on to continue to collect I think he said a
2 trunk full of child pornography after that even
3 though he had been investigated and in trouble for
4 child pornography.

5 He puts up with a good deal of risk to
6 engage in child molestation which is one of the
7 criteria in the Federal Code of Regulations.

8 He's an individual who has demonstrated
9 attitudes tolerant of child molest and I believe
10 he still has those; that it doesn't harm the
11 child; that you could have a loving, nurturing
12 relationship sexually with a child; that law
13 enforcement causes more trauma to children than
14 having sex with them; that he was a loving parent
15 to an 11-year-old boy that he brought into his
16 home and engaged in sex with.

17 These attitudes are permission givers.
18 They are part and parcel of having serious
19 difficulty with your volition.

20 We have evidence of very current
21 deviant sexual interest. That would be 2008 --
22 the child images that I discussed a number of
23 times.

24 Furthermore, he wrote a treatise of
25 some type to the staff at Butner which outlined

1 the ideal program for a sexually dangerous person
2 and one component of that ideal program -- while
3 he was said to have some good ideas that would
4 help administratively -- he suggested that they
5 house the juvenile sex offenders in the adult
6 sexually dangerous person facility so he continues
7 obviously to struggle with his volition.

8 Q Dr. Phenix, of all the factors that
9 we've talked about today does the research show
10 that there's one particular factor that is more
11 associated with risk of reoffense than others?

12 A Yes.

13 Q What is that factor?

14 A Sexual deviance is the strongest
15 predictor of sexual reoffense.

16 Q How does the consideration of sexual
17 deviance affect your evaluation in this case?

18 A I think that Mr. Comstock has had
19 throughout his life and still has extreme sexual
20 deviance. He has a very compulsive pedophilia.
21 He has few skills to intervene in that, and he has
22 attitudes and emotional identification with
23 children that is strongly going to further that
24 behavior if released.

25 Q Dr. Phenix, despite his actuarial

1 scores, despite his medical conditions, despite
2 his age you still find that he is a sexually
3 dangerous person.

4 A Yes, I do; at high risk to reoffend
5 sexually.

6 Q Aren't you just ignoring the research
7 and substituting your clinical judgment?

8 A No. I think I'm paying attention to
9 the research. Actuarial instruments are limited
10 in what they can tell us. Sometimes they can give
11 us a pretty good assessment of overall risk and
12 sometimes they cannot.

13 What I'm paying attention to because I
14 think the actuarials cannot inform us accurately
15 in this case is the strongest predictor of sexual
16 reoffense and that is sexual deviance and the
17 research would back me in terms of that risk
18 factor being important in understanding his
19 overall risk.

20 MR. ROYSTER: Thank you, Dr. Phenix.
21 We don't have any other questions at this time,
22 Judge. Thank you.

23 THE COURT: You may cross examine.

24 MS. GRAVES: Thank you, Your Honor.

25 RECROSS EXAMINATION

1

2 BY MS. GRAVES:

3 Q Dr. Phenix, if sexual deviance is the
4 most important predictor of sexual reoffense then
5 why isn't that used as the only indicator for all
6 of these actuarials?

7 A It's not the only risk factor for
8 sexual reoffense; so therefore the actuarials have
9 tried to capture other risk factors that
10 collectively in certain cases can be associated
11 with sexual reoffense such as combining the
12 criminality cluster with sexual deviance as well.

13 Q The fact is that the actuarials do take
14 into account sexual deviance, don't they?

15 A To a certain extent. Not to the extent
16 of Mr. Comstock.

17 Q What you're doing is you're assuming
18 that Mr. Comstock is completely unlike the group
19 that has been used for the compilation of the
20 Static-99R and the 2002R, is that your position?

21 A Yes.

22 Q But you don't have any data to support
23 that, do you? You don't know the characteristics
24 of the folks within the sample to that extent, do
25 you?

1 A There was a small group of individuals
2 that committed child molest and rape. It's very
3 unusual to have an offender who has had so many
4 victims so there would be few offenders in those
5 samples with that many victims.

6 Q Dr. Phenix, isn't it your opinion that
7 people who have been convicted of sex offenses
8 have actually offended against many more people
9 than they've actually been caught for?

10 A Sometimes they have offended against
11 many more. For example, the Able study would
12 indicate individuals who were convicted of one
13 male child victim and when given constitutional
14 immunity would actually disclose an average of
15 four male victims rather than one. There are few
16 offenders that have a more extraordinary number of
17 victims as Mr. Comstock.

18 Q That could be, but it also could be
19 that those people are under-reporting. Isn't it
20 quite possible that's the case?

21 A There are studies that examine
22 under-reporting. We have studies like the Able
23 study that I just quoted that indicate few
24 offenders who have these extraordinary number of
25 victims.

1 Q But it is quite possible that the
2 people in the sample group are simply
3 under-reporting their victims, isn't it?

4 A It's possible.

5 Q You're not relying on the actuarials as
6 to Mr. Comstock because they simply do not support
7 your conclusion that he is at high risk.

8 A That's not true.

9 Q It is true that they don't support your
10 conclusion that he's at high risk, isn't it?

11 A Yes.

12 Q Do you often ignore the actuarials?

13 A Very rarely.

14 Q How many times in the 24 Adam Walsh
15 cases that you've done have you actually ignored
16 the actuarials?

17 A None of them.

18 Q This would be the only one.

19 A That's correct.

20 Q If you don't give the actuarials the
21 same weigh in Mr. Comstock's case then your
22 opinion as to Mr. Comstock could hardly be
23 standardized. It's not really comparable to the
24 opinions that you've given in other cases, is it?

25 A Every opinion I give is different. In

1 every opinion I give I consider all case factors.
2 Every person is different.

3 Q So your opinion regarding Mr. Comstock
4 is based largely on your clinical judgment, is
5 that correct?

6 A It's based largely on the risk factor
7 sexual deviance and his inability to control that.

8 Q Is that a result of your clinical
9 judgment?

10 A Certainly as a clinician I identify
11 with that as the case for him.

12 Q Actuarials have been found to have
13 moderate predictive values, is that correct?

14 A Moderate predictive accuracy, yes.

15 Q Clinical judgment has poor predictive
16 accuracy, isn't that correct?

17 A Yes. I would say .50 would equate to
18 flipping a coin when using only your judgment,
19 hunches about an individual that's why it's
20 important to consider research derived risk
21 factors such as sexual deviance in any case.

22 Q There's really no way for the Court to
23 know how accurate your clinical judgment has been,
24 is there? In other words, there's no measure for
25 the number of times that you've been right in

1 determining that someone is sexually dangerous
2 versus the number of times you've been wrong.

3 A That's correct.

4 Q In fact, if you determine that someone
5 is sexually dangerous and that person is locked up
6 and it turns out that you were wrong there's
7 absolutely no way to know what you've done is made
8 a false positive prediction, is there?

9 A Correct.

10 Q Do you believe that pedophiles as a
11 group have a higher sex drive than non-pedophiles?

12 A Yes, I believe the research would
13 demonstrate that.

14 Q So there's research that demonstrates
15 that pedophiles have a higher sex drive than
16 non-pedophiles.

17 A Right. That's not to say that every
18 one does; it's just more prevalent in those
19 samples.

20 Q You have also expressed the view in
21 another setting that you believe Mr. Comstock will
22 remain at high risk until the day he dies.

23 A I do unless he suffers from some
24 medical condition that causes him to have reduced
25 libido.

1 Q You are not a doctor, is that
2 correct -- a medical doctor?

3 A No, I'm not.

4 Q So you would defer to a medical doctor
5 on the question of how his medical condition has
6 affected him sexually.

7 A I would certainly defer to a doctor to
8 offer an opinion about that.

9 Q I believe you indicated in your report
10 that the reduction for age regarding Mr. Comstock
11 on the Static-99R was inappropriate. Is that
12 still your opinion that it was inappropriate?

13 A Yes. I don't think it accurately
14 reflects his risk according to his age.

15 Q You're not quibbling with the way the
16 instrument operates, are you?

17 A No, or I would have scored it
18 differently. I scored it the way it should be
19 scored.

20 Q According to the instrument he is given
21 credit for age and the cutoff that you referred to
22 as being so troublesome to you -- age 60 -- is
23 actually the cutoff that has been established by
24 the people who created the instrument, is that
25 right?

5 A Yes, for groups of sex offenders.
6 Group data.

11 A Correct. That's why I didn't compare
12 Mr. Comstock to that example because that would be
13 apples-to-oranges in my opinion.

15 A The Static-99R sample. I don't think
16 he's well represented in that sample.

20 A No, I don't know all of the
21 characteristics.

24 A No, I don't.

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1 protective factors regarding Mr. Comstock. You
2 indicated that he suffered a stroke, myocardial
3 infarction and a number of medical conditions
4 prior to his last offense but that's not accurate,
5 is it?

6 A No. He suffered the myocardial
7 infarction after his offense.

8 Q And he also suffered, as you noted in
9 your direct examination, a number of other medical
10 conditions after his last offense, isn't that
11 correct?

12 A I believe he had a number of existing
13 conditions and that and the prostate cancer were
14 the two conditions that occurred after he was
15 incarcerated.

16 Q And he also had another stroke after he
17 was incarcerated, isn't that right?

18 A Yes. I think in testimony I reported
19 he had a TIA after he was incarcerated.

20 Q Do you know what treatment he received
21 for his prostate cancer?

22 A I believe radiation.

23 Q You're not of the opinion, are you,
24 that sexual function played no role in
25 Mr. Comstock's child molesting are you?

1 A (No audible response.)

2 Q In other words, in order for
3 Mr. Comstock to molest children he would have some
4 degree of sexual function necessary.

5 A I'm not clear what you mean by sexual
6 function. If you mean erectile function no, he
7 does not. As a matter of fact, his preference
8 sexually in terms of sexual fantasy and sexual
9 behavior with his victims was massaging and
10 fellating them and then masturbating. He had very
11 few incidents of anal intercourse and he does not
12 report that as being a preferable activity.

13 Q But at the same time you're not saying
14 that his goal is not sexual gratification, are
15 you?

16 A I believe his goal is both sexual and
17 emotional gratification.

18 Q So you're not suggesting that only if
19 he achieves an erection and an organism is
20 Mr. Comstock interested in molesting children.

21 A I believe he'll be interested in
22 molesting children irrelevant of any erectile
23 functioning.

24 Q But by the same token his interest in
25 molesting children is for sexual gratification,

1 isn't it?

2 A Yes, and emotional gratification.

3 Q I want to direct your attention to the
4 Kansas Sex Offender Treatment Discharge Summary.
5 It's Exhibit 14.

6 In your testimony I think you
7 highlighted one portion of that. You said his
8 prognosis was poor and you noted that it was a
9 timed program; in other words, in order to
10 successfully complete the program one simply had
11 to remain in the program for a specific amount of
12 time or didn't have to meet certain program goals,
13 is that right?

14 A He may have had to meet certain program
15 goals. I'm not clear on what those might be.

16 Q It does indicate on page one of that
17 discharge summary looking at history of treatment,
18 the second full paragraph that Mr. Comstock
19 entered the sexual offender treatment program on
20 July 18, 2002 and met the criteria for successful
21 completion of the 18-month program, is that right?

22 A That's right.

23 Q Further down on that page looking at
24 program participation and observations the third
25 paragraph under that section --

1 A Yes.

2 Q It also notes that Mr. Comstock
3 presented as asexual; that is he denied any
4 interest in sexual behaviors, is that right?

5 A Yes, on the Multiphasic Sex Inventory.

6 Q And Mr. Comstock appeared highly
7 motivated for treatment. Is that accurate?

8 A Yes. That would have been on the
9 psychological test.

10 Q But the result is that he appeared
11 highly motivated for treatment, is that correct?

12 A That's correct.

13 Q Further down going to the next
14 paragraph, second sentence -- as his treatment
15 progressed he increased his level of
16 responsibility. Is that accurate?

17 A Could you direct me to that paragraph?

18 Q I'm talking about the last line of the
19 first page. Are you with me?

20 A Yes.

21 Q He increased his level of
22 responsibility.

23 A Yes.

24 Q Is that correct?

25 A Yes.

1 Q This is a treatment program that was
2 put on by the Kansas Department of Corrections,
3 correct?

4 A Correct.

5 Q Turning your attention to page three of
6 this discharge summary, looking at the fourth full
7 paragraph where it begins Mr. Comstock completed a
8 PMPC that was thorough and insightful. Do you
9 know what PMPC is?

10 A I'm sorry, are we on page three, third
11 paragraph?

12 Q Actually it's the fourth full
13 paragraph. It begins with Mr. Comstock completed
14 a PMPC that was thorough.

15 A Yes. I don't know what that is.

16 Q It goes on to say he formulated
17 interventions for each element of his deviate
18 sexual pattern, is that correct?

19 A Yes.

20 Q He developed positive, appropriate
21 activities that will occupy his time and energy.
22 Is that correct?

23 A Yes.

24 Q Towards the end of that paragraph,
25 fourth line from the bottom it says Mr. Comstock

1 appears to have developed a fair amount of insight
2 into his own behavior. Is that accurate?

3 A Yes.

4 Q Would you agree that someone who goes
5 through sex offender treatment would continue to
6 develop their attitudes and the hope would be that
7 they would continue to grow and progress as time
8 moves along?

9 A Yes, you would hope that.

10 Q Even after treatment one would hope
11 that they would continue to internalize the things
12 that they've learned in treatment and apply those
13 things as they move along.

14 A Yes.

15 Q In fact, when someone is in a treatment
16 setting in a prison when it's all said and done --
17 the final analysis -- all you have to go by is
18 what they say, isn't it; what they tell you as far
19 as the change in their attitudes and beliefs?

20 A You have that, you have written
21 homework, you have how they participated, you have
22 if they engaged in high risk behaviors during
23 treatment. There's a lot of thoughts, attitudes,
24 behaviors that collectively inform you about their
25 progress.

1 Q In the final analysis when it's all
2 said and done and a person is about to be released
3 from prison what you really have is their
4 statements, their words about what they have
5 developed and what they believe, isn't it?

6 A Yes.

7 Q What you've done is you've chosen not
8 to believe Mr. Comstock.

9 A I'm not sure in what regard.

10 Q In regard to his statements regarding
11 how he has internalized the fact that having sex
12 with children is harmful to him.

13 A No, I don't believe he has internalized
14 those.

15 Q I want to refer you to the notes that
16 you took during the interview with Mr. Comstock.

17 A Yes.

18 Q Do you have a copy of those with you?

19 A Not up here on the stand I don't.

20 Q I just got a copy this morning.

21 THE COURT: For purposes of the record
22 why don't you mark it. I assume you're not going
23 to offer it.

24 MS. GRAVES: No, I'm not.

25

1 (Respondent's Illustrative Exhibit No.
2 1 Marked for Identification.)

3

4 BY MS. GRAVES:

5 Q Dr. Phenix, I'm going to hand you what
6 I marked as Respondent's Illustrative Exhibit No.
7 1. I believe those are the notes that you took
8 during your interview with Mr. Comstock.

9 A Yes.

10 Q Unfortunately the pages are not
11 numbered but hopefully we can move through it.

12 First of all I think you testified on
13 direct that you interviewed Mr. Comstock for three
14 to four hours. You noted on the front page the
15 interview was two and a half hours.

16 A Yes, that would be correct.

17 Q So that's the actual amount of time.

18 A Yes, approximately.

19 Q I want to direct your attention to page
20 16 -- Your Honor, it might work better if I can
21 stand next to the witness.

22 THE COURT: I have no objection if the
23 witness has no objection. It will probably save a
24 lot of time.

25 BY MS. GRAVES:

7 A That's right.

11 A I try to quote when I can. Sometimes
12 it's just an observation or a statement of me
13 rewording it.

19 A Yes.

23 A Right.

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9 A Yes.

13 A Right. He was found with their
14 materials but apparently he was not a member of
15 the organization in 2000.

17 A Yes.

23 A That's correct.

25 A Yes.

25 A Yes.

4 Q Then you had an opportunity to discuss
5 with him a release plan, is that accurate?

8 A What he's going to do when he is
9 released. Where he's going to live, what kind of
10 job he'll have, how he'll support himself, what
11 kind of hobbies and interests he'll have when he
12 gets out, how he's going to formulate friendships
13 and a social circle.

15 A It matters because a stable release
16 plan that reduces high risk situations will help
17 prevent an offender from reoffending.

22 Q He indicated also he would avoid
23 children, is that right?

25 Q He indicated that he has a low libido.

1 A Yes.

2 Q Finally I want to turn your attention
3 to page 29.

4 A Yes.

5 Q This is when you're asking him about
6 his current fantasies, right?

7 A Yes.

8 Q He indicates in section number nine
9 that his last sexual fantasies were a long time
10 ago -- a couple of years.

11 A Yes.

12 Q I think you must have asked him what he
13 would do if he found himself in a high risk
14 situation, is that right?

15 A Yes.

16 Q For example, if an attractive boy sat
17 next to him on a bus what would he do?

18 A He would move.

19 Q Isn't that what you would want him to
20 do?

21 A Yes.

22 Q It appears from that that Mr. Comstock
23 is saying all of the right things, correct?

24 A Yes. I believe that's reflected in the
25 discharge summary from his treatment program as

1 well.

2 Q Going back to the material that was
3 found in Mr. Comstock's cell in 2008 -- I guess
4 2008 would pretty much coincide with the time he
5 last said he had sexual fantasies, wouldn't it?
6 He said that at least two years ago, right?

7 A Right.

8 Q But that material even in and of itself
9 was not child pornography, was it?

10 A No. There was a full frontal view of a
11 prepubescent boy.

12 Q Was that from like a National
13 Geographic Magazine?

14 A I didn't see it.

15 Q As far as you know there was no child
16 pornography among that material.

17 A As far as I know.

18 Q I want to talk to you a little bit more
19 about pedophilia. Mr. Comstock has never denied
20 to a treatment provider as far as you know from
21 all the voluminous materials that you've seen --
22 he has never denied to a treatment provider that
23 he suffers from pedophilia, has he?

24 A No.

25 Q In your view pedophilia is a sexual

1 orientation or like a sexual orientation; is that
2 your testimony?

3 A Yes.

4 Q It's something that Mr. Comstock cannot
5 change.

6 A Correct.

7 Q When Mr. Comstock puts in his writings
8 that he is a pedophile, he is neither happy about
9 it nor sad about it, it's neither good nor bad
10 that does not suggest that he is more likely to
11 reoffend, does it? That's just a reality, isn't
12 it?

13 A His statement that he is a pedophile is
14 a reality that he has pedophilia. It does not
15 mean that he will or will not reoffend
16 necessarily.

17 Q So there are plenty of people who have
18 pedophilia who do not offend against children at
19 all, is that correct?

20 A There are individuals who do not offend
21 against children with pedophilia.

22 Q And then there are individuals with
23 pedophilia who stop offending against children.

24 A Yes.

25 Q Just because an individual has

1 pedophilia does not mean that the individual lacks
2 volitional control, does it?

3 A No.

4 Q When you testified on direct that
5 there's a correlation between pedophilia and an
6 increased likelihood of offending you're not
7 referring to a lack of volitional control.

8 A I think I am. I think when a person
9 experiences intensive recurrent sexually arousing
10 fantasies and urges to have sex with children
11 they're more likely to go on to reoffend than
12 someone who does not experience that.

13 Q You are saying that a pedophile is more
14 likely to offend than a non-pedophile, is that
15 what you're saying?

16 A Yes.

17 Q But you're not saying that simply by
18 virtue of the fact that someone has pedophilia
19 they lack volitional control.

20 A That is correct.

21 Q So you would agree that Mr. Comstock
22 should not be committed merely because he has
23 pedophilia.

24 A Correct.

25 Q I want to direct your attention to

1 Exhibit 16 of the government's exhibits.

2 A Yes.

3 Q That would be the Kansas state judgment
4 in Mr. Comstock's case for molesting the boys in
5 Kansas.

6 A Yes.

7 Q I want you to turn to page three of
8 that judgment.

9 A Yes.

10 Q There are reasons cited as the basis
11 for departure in that case, is that right? Do you
12 see that at the top?

13 A Yes.

14 Q One of the reasons cited is that the
15 defendant accepts responsibility and shows extreme
16 remorse. Do you see that?

17 A Yes.

18 Q That's referring to Mr. Comstock,
19 right?

20 A Yes.

21 Q I want to talk a little bit about your
22 chart and the timeline that you prepared.

23 A Yes.

24 Q The source of the vast majority of this
25 information was Mr. Comstock himself, is that

1 right?

2 A Yes.

3 Q What we just don't really know is what
4 Mr. Comstock's definition of a victim was in all
5 of these instances, is that true?

6 A We know for those instances what sexual
7 behavior occurred because he described that.

8 Q It would not be fair to say that every
9 one of these is a victim of a hands-on sexual
10 offense, would it?

11 A I would have to reference back to see
12 what the actual activity was. Many of them were.

13 Q I'm not disputing that. Far too many.
14 What I'm suggesting is that this also
15 included such things as voyeurism and even child
16 pornography.

17 A That's right.

18 Q I think you testified that there was no
19 significant period when Mr. Comstock was able to
20 manage not to offend such that that even supported
21 your conclusion that he has poor volitional
22 control. Is that a fair summary of what you
23 testified to?

24 A It is.

25 Q But there was a period according to

1 Mr. Comstock, whose reports you have relied on --
2 there is a two-year period where Mr. Comstock
3 indicated there were no victims, isn't that right?

4 A Yes.

5 Q Do you not consider two years to be a
6 significant period?

7 A No, I don't.

8 Q You also testified on direct that the
9 fact that someone commits an act shows a lack of
10 volitional control. Is that accurate? Did I
11 write that down correctly? Is that what you
12 intended to say?

13 A Yes. If a person molests a child that
14 would show poor volitional control.

15 Q The very fact that someone commits
16 molestation in your view demonstrates a lack of
17 volitional control.

18 A At that time, yes.

19 Q You make no distinction between the
20 criminal who chooses to break the law versus the
21 criminal who feels a compulsion to break the law.

22 A No, I did not make a distinction.

23 MS. GRAVES: Your Honor, that's all I
24 have. Thank you.

25 THE COURT: I have just a couple

1 questions.

2 It appears from listening to your
3 testimony and reading what I've read that the
4 victims of Mr. Comstock were victims where he set
5 himself up in a position starting from when he
6 went to college -- from listening to your
7 testimony -- where he would be in a position to
8 gain access number one, and trust number two. I
9 think other than those that he paid for that was
10 pretty much his MO for victims. Would that be a
11 fair statement?

12 THE WITNESS: Yes.

13 THE COURT: I think I heard you also
14 say that there's no indication that he selected
15 victims by violence, or there's nothing that would
16 indicate he touched somebody's leg on a bus or
17 something of that nature where he would take such
18 a risk.

19 THE WITNESS: Not that I know of.

20 THE COURT: It appears he throughout
21 all of his victims selected victims where he had
22 access, could gain some control or something and
23 that the risk was not the same as it would be for
24 other situations; for instance he went to
25 countries that had laws that were different than

1 ours so that his risk factors he apparently took
2 into consideration to some extent going to some of
3 the places he did.

4 My question is how does that factor
5 into his risk factor today since he will not have
6 access like he used to have? Does that factor
7 into the risk factor that you've given here?

8 THE WITNESS: Yes, it does.

9 THE COURT: How does that factor in?

10 THE WITNESS: First of all MOs change
11 and evolve over time because the offender wants to
12 be successful so they devise a way that they can
13 do that.

14 He had been successful all his life by
15 going to these countries that are tolerant of this
16 behavior; where there are available victims, by
17 having jobs where he could access the victims. As
18 you say, that's not a likely scenario for him.

19 He also was very skilled at initiating
20 friendships with children's parents and getting
21 them to trust him. He's been a coach, he's been a
22 teacher.

23 THE COURT: But they're always in a
24 situation where he was teaching or where he was
25 counseling; it wasn't just going into the general

1 community and making friends.

2 THE WITNESS: Your Honor, he also
3 worked at youth centers in the community besides
4 being a teacher and a hired coach. He would work
5 at a youth center where he would meet children and
6 parents and he would develop relationships.

7 THE COURT: He worked at a youth center
8 as a result of his expertise in education. He was
9 in Phys Ed, he coached basketball, things where he
10 would have some expertise and have an entrance, so
11 to speak, to the parents.

12 THE WITNESS: He would. Now he has a
13 skill set where he could be a volunteer.

14 There are children everywhere and there
15 are all kinds of places where he can access
16 children through churches, through clubs, through
17 the next-door neighbor.

18 What I do know is that Mr. Comstock is
19 creative and well organized and has been focused
20 on accessing children in a variety of ways and
21 it's my belief if he's in the community again that
22 he will find a way to do that.

23 THE COURT: We heard about the incident
24 in prison in 2008 where he accessed images that
25 were certainly inappropriate in prison but

7 THE COURT: We know he'll have access
8 to that kind of stuff for sure.

16 Generally in time that's not enough.
17 That's not going to meet his needs. He'll be in
18 the proximity of children. He actually said in
19 his relapse prevention plan he thought he would be
20 okay to be around children. They will be there.

24 THE COURT: You answered both of my
25 questions.

1 Government, any further questions?

2 MR. ROYSTER: Just a few follow-up.

3 THE COURT: Sure. Go ahead.

4 MR. ROYSTER: Thank you, Judge.

5

6 REDIRECT EXAMINATION

7

8 BY MR. ROYSTER:

9 Q Dr. Phenix, in your review of the
10 records and everything that you've considered in
11 this case are there any reasons that he offended
12 other than just sexual gratification?

13 A Yes, there's another primary reason.

14 Q What is that?

15 A Emotional identification with children.
16 His emotional needs 100 percent are met by
17 friendships and relationships with children
18 whether they're sexual or not. He's lonely
19 without that and it leads him to children to meet
20 those needs.

21 Q Even if he's got no libido and he can't
22 get an erection is he still sexually dangerous?

23 A Yes.

24 Q That is because of the emotional
25 identification to children?

1 A Yes.

2 Q On cross examination you were asked
3 about his plans for release. Do you believe that
4 he has a solid release prevention plan?

5 A No.

6 Q Is what you described and talked about
7 on cross examination is that a solid release
8 prevention plan?

9 A He has a release plan. I don't think
10 it's sufficient for him.

11 Q From everything that you've reviewed in
12 this case are you aware of any relapse prevention
13 plan for Mr. Comstock?

14 A No, I have not seen one.

15 THE COURT: Could you come up with one,
16 or do you think it just wouldn't be possible
17 because of the emotional attachment?

18 THE WITNESS: He would need to come up
19 with a relapse prevention plan which is specific
20 to his arousal pattern, his victim type and his
21 environment.

22 THE COURT: In your estimation he's not
23 come up with such a plan.

24 THE WITNESS: Correct.

25 THE COURT: Even if he came up with

1 such a plan what do you think the possibilities
2 are of it being really fulfilled?

3 THE WITNESS: It depends upon his
4 decision to follow it.

5 THE COURT: Thank you.

6 MR. ROYSTER: I don't have any other
7 questions, Judge. Thank you.

8 THE COURT: Counsel have any questions?

9 MS. GRAVES: No, Your Honor.

10 THE COURT: Doctor, thank you very
11 much. May we excuse the doctor?

12 MR. ROYSTER: Yes, Your Honor.

13 THE COURT: Any objection?

14 MS. GRAVES: No objection.

15 THE COURT: You may be excused.

16 It's 1:00. Let's break for lunch.

17 We'll see you all back around 2:00.

18

19 (Luncheon Recess.)

20

21 MR. ROYSTER: Judge, before we call our
22 next witness we would like to move into evidence
23 some of the exhibits.

24 THE COURT: I thought they had been
25 stipulated to.

1 MR. ROYSTER: There are some objections
2 and I think we can deal with those relatively
3 quickly.

4 For the first eight exhibits there are
5 not any objections so we move those into evidence
6 at this time.

7 THE COURT: There being no objection
8 they will be received.

9 MR. ROYSTER: Also Exhibits 21, 24 and
10 28 there are no objections so we would move those
11 into evidence as well.

12 THE COURT: Give me those numbers one
13 more time.

14 MR. ROYSTER: Numbers 21, 24 and 28.

15 THE COURT: Okay.

16 MR. ROYSTER: On the ones that there
17 are objections it's our understanding with respect
18 to whether they're business records or not we've
19 stipulated to that so it's not necessary for us to
20 call a custodian, but there are remaining
21 objections such as the double hearsay and the
22 Sixth Amendment and the privilege. We think that
23 the privilege issue has been dealt with.

24 The Sixth Amendment issue we believe
25 relates to confrontation. It's our position that

1 the Sixth Amendment does not apply in these civil
2 cases. We think the rest of these should be
3 admitted. I'm not entirely certain what the basis
4 of the objections are.

5 THE COURT: Let's start at the
6 beginning.

7 The Sixth Amendment is Exhibit No. 9.
8 Counsel?

9 MS. SHEA: Your Honor, we objected on
10 the Sixth Amendment grounds because the following
11 records are after Mr. Comstock was certified and
12 so we said that they were in preparation for
13 litigation.

14 THE COURT: By the government?

15 MS. SHEA: Yes.

16 THE COURT: Let's do something. Do we
17 need these right now? I'd have to sit here and
18 read these documents.

19 MR. ROYSTER: No we don't, Judge.

20 THE COURT: I have your list here from
21 your pre-trial statement. It's basically 9, 10,
22 11, 12, 17 and 25. Let's wait until we get to
23 those. Then I'll have a chance to read them or
24 see what the witness says or how they relate and
25 all those things and we'll go from there.

1 MR. ROYSTER: Just for Your Honor's
2 purposes -- this is going to happen throughout the
3 two weeks that you're here -- there are going to
4 be exhibits that the government is seeking
5 admission of that we may not necessarily spend
6 much time, if any time, on in the course of the
7 presentation to the Court.

8 THE COURT: Do you want to use it for
9 argument?

10 MR. ROYSTER: Use it for argument, use
11 it for your findings of fact and conclusions of
12 law. It may be that they're not always
13 referenced. I just want you to know that just
14 because you get a big notebook doesn't mean we'll
15 be going through it.

16 THE COURT: Before you close we'll go
17 through the exhibits you want admitted. Since the
18 authenticity has been agreed to at that time I can
19 take a look at them.

20 MR. ROYSTER: We're ready to go with
21 the next witness.

22 THE COURT: Very well.

23 MS. SHEA: Thank you, Your Honor.

24 MR. GRAY: Your Honor, at this time the
25 United States would call the respondent Mr.

1 Graydon Comstock.

2 MS. GRAVES: Your Honor, we would like
3 to note our objection to forcing Mr. Comstock to
4 testify in this matter.

5 THE COURT: Tell me about that.

6 MS. GRAVES: Essentially he's being
7 forced to testify against himself. I understand
8 that the matter is considered civil in nature.
9 It's our view that because of the consequences of
10 these type proceedings he should not be forced to
11 do so.

12 There are certain aspects of his
13 testimony that we might need to assert the Fifth
14 Amendment if they question him regarding a charge
15 of misconduct.

16 THE COURT: If there is any time you
17 think you have to assert the Fifth Amendment I'll
18 be more than happy to talk about that. It is
19 civil in nature. If I'm not mistaken you have
20 listed him as a witness in your case, too.

21 MS. GRAVES: I thought we changed our
22 mind.

23 THE COURT: It's civil in nature. I
24 think they have a right to call him. Very frankly
25 I think the Court was kind of looking forward to

1 hearing from him and asking him questions, also.
2 You may proceed.

3

4 GRAYDON EARL COMSTOCK, JR.,
5 was sworn or affirmed and testified as follows:

6

7 DIRECT EXAMINATION

8

9 BY MR. GRAY:

10 Q Mr. Comstock, would you please state
11 your name?

12 A Graydon Comstock.

13 Q You're the respondent in this case,
14 correct?

15 A Yes, I am.

16 Q Mr. Comstock, there has been a lot of
17 discussion by one of the previous witnesses about
18 this issue and I'll just go ahead and ask you --
19 are you a pedophile?

20 A Yes, I am.

21 Q By being a pedophile it means you like
22 little kids.

23 A I prefer children before they have
24 pubic hair.

25 Q By children are we talking about boys

1 in particular?

2 A Yes.

3 Q Boys between the ages of six to 14?

4 A No. Maybe ten and 14.

5 Q Have you had any involvement with any
6 kids under the age of ten?

7 A I do not believe so.

8 Q Now, when I use the word like what I'm
9 referring to is a sexual attraction. Are you
10 sexually attracted to young boys between the ages
11 of ten and 14?

12 A Yes, I am.

13 Q That's how you feel currently, right?

14 A Actually right now I somewhat feel I'm
15 asexual. I don't think I have much libido in any
16 direction.

17 Q You're attracted to little boys still
18 or that's who you like, that's your sexual
19 preference.

20 A I'm attracted to boys.

21 Q But you would testify that you can
22 control your urges with regard to acting on your
23 attraction to little boys.

24 A Will you repeat that, please?

25 Q You would testify that you can control

1 your urges with regard to your attraction to
2 little boys.

3 A I don't have the desire for little
4 boys.

5 Q I'm sorry. To boys between the ages of
6 ten and 14.

7 A Yes.

8 Q Mr. Comstock, how long have you had
9 this attraction to boys between the ages of ten to
10 14?

11 A I was first aware I was interested in
12 another boy when I was nine years old. In junior
13 high I think I somewhat fixated on about the age
14 range of ten to 14. We had an unusual PE program
15 where we all swam naked and I felt like from that
16 point on I was attracted to boys ten to 14.

17 Q Mr. Comstock, perhaps you could help
18 explain this not only to me but also to the
19 Court -- do you feel this attraction to
20 prepubescent boys -- boys between the ages of ten
21 and 14 -- is natural?

22 A No, I do not.

23 Q Do you feel as if it's just the way you
24 are?

25 A I don't know how I got that way. I do

1 think it's much like an orientation. I certainly
2 didn't choose it nor want it. It just kind of is.

3 Q You said it's something like an
4 orientation. Are you referring to pedophilia is
5 similar to homosexuality?

6 A Homosexuality used to be against the
7 law just like pedophilia is now.

8 Q Are there any similarities between
9 homosexuality and pedophilia in your mind?

10 A The male is the object of attraction.

11 Q With regard to pedophilia do you have
12 any thoughts or feelings in regard to whether or
13 not it should be legal or lawful?

14 A It should not be legal or lawful.

15 Q With regard to some of the places that
16 you've had a chance to visit such as the
17 Philippines is engaging in sex with boys between
18 the ages of ten and 14 unlawful?

19 A No, sir.

20 Q You say engaging in sex with children
21 now or boys between the ages of ten and 14
22 shouldn't be lawful.

23 A It should not be.

24 Q Why do you feel that way now?

25 A Because I think it does harm kids. It

1 has a psychological and emotional impact
2 primarily.

3 Q But in the past you have thought it
4 should be lawful, correct?

5 A I don't remember ever saying that.
6 I've seen the writing. Maybe I said that in the
7 past but I don't recall it.

8 Q Do you remember writing a letter to the
9 personnel out at Butner back in October of 2008
10 where you shared your views on pedophilia?

11 A I don't remember that particular
12 instance; no, sir.

13 Q Do you remember telling the staff at
14 Butner -- if you look at your binder in front of
15 you -- look at that binder in front of you --
16 there's a tab that says number 12. Let me know
17 when you have a chance to get to that. I'm sorry.
18 I meant tab number 11.

19 A I have it.

20 Q Is the document in front of you a
21 document that says Federal Bureau of Prisons
22 Psychology Data System?

23 A Yes.

24 Q Would you mind just taking a moment to
25 read through that form; in particular the third

1 full paragraph that begins with during our
2 meeting?

3 A To myself?

4 Q Yes. Feel free to read it to yourself.
5 Let me know when you have had an opportunity to
6 finish reading it.

7 A I don't remember writing it, but it
8 does appear that I did.

9 Q Do you remember telling the
10 psychological staff out at Butner --

11 A Dr. Bourke, yes.

12 Q That you considered that pedophilia was
13 similar to an orientation or lifestyle choice?

14 A I think it's an orientation. I don't
15 think it's necessarily a legitimate one or one
16 that's legal. I think it's an orientation just
17 like the others.

18 Q You say being a pedophile is who you
19 are. Do you remember saying that to Dr. Bourke?

20 A Again, I didn't choose my orientation.
21 It is who I am. I think at this point in time I'm
22 not going to change it. I have to make the best
23 of what I am and go on from there.

24 Q With regard to treating who you are and
25 going on from there, back when you were talking to

1 Dr. Bourke you indicated that you didn't want to
2 participate in treatment; that you weren't a
3 treatment candidate in any way.

4 A I don't think so. I think that's
5 correct. I had treatment in Kansas and with
6 coercion and a lot of things it turned out to be
7 very negative. That's basically why I'm in this
8 courtroom today.

9 Q We'll talk a little bit about the
10 coercion. Do you think the Kansas program worked?

11 A I think so. I learned things in there
12 that I have used and when I get out will continue
13 to try to use.

14 Q What sort of things did you learn?

15 A I learned that things go in a cycle and
16 we get lonely and from there on to different
17 things and it ends up in a violation. That there
18 are things you can do to help veer away from that.

19 Q Did your learn anything else in the
20 Kansas program?

21 A Yes.

22 Q What else?

23 A It was an 18-month long program.

24 Q Did they teach you strategies for how
25 to deal with your urges?

1 A Yes.

2 Q Did they teach you a strategy in terms
3 of if you feel the urge to be around children that
4 you should do something?

5 A If you feel an urge to be around
6 children the main thing they would stress is the
7 need for a support network to call somebody that
8 would help you get back on track.

9 Q Did it teach you any strategies with
10 how to deal with things such as child pornography?

11 A Yes. I don't remember it being
12 discussed too much. Pornography is an insighter.
13 It tends to stimulate you to do things that you
14 shouldn't do and you should avoid it.

15 Q Is that one of your triggers?

16 A I'm not sure.

17 Q You're not sure?

18 A I'm not sure it's a trigger. I've had
19 pornography. I don't remember a direct tie-in
20 between pornography and victimizing someone.

21 Q Just so I'm clear, we're talking about
22 child pornography.

23 A Yes.

24 Q Do you think you could possess child
25 pornography and that would be okay?

1 A I think that would not be all right.
2 It can be a trigger and it's against the law.

3 Q You just said it might be a trigger.
4 What sort of things might it trigger you to do?

5 A To try to makes contact with young
6 people to look for opportunities to associate with
7 possible victims.

8 Q You said earlier that you took the
9 Kansas sexual offender treatment program and that
10 you got some good things out of it.

11 A Yes, I did.

12 Q You had received psychological
13 treatment prior to the Kansas treatment with
14 regard to pedophilia, right?

15 A Very minimal.

16 Q You did this because you were having
17 urges and touching kids, right?

18 A I did it because I was confused and
19 wondered if I could get any help and do something
20 to help alter my orientation.

21 I started it when I was 22 years old.
22 I went to a psychiatrist in Cleveland and
23 primarily because of the cost I did not continue
24 that.

25 After my stroke in the Netherlands I

1 had counseling which was not only in regard to my
2 pedophilia which we did discuss but it was also to
3 help me adjust to a career change due to my
4 stroke.

5 Q You had counseling before you went
6 overseas to teach at these schools in the
7 Netherlands and in India, correct?

8 A Yes. One session.

9 Q That one session was focused on dealing
10 and addressing the issues of your orientation as
11 you described.

12 A Primarily it had to do with my
13 relationship with my mother. It didn't seem to be
14 directly related.

15 Q You just testified you also were trying
16 to address your orientation. Did that treatment
17 take place before you went over to India?

18 A Yes.

19 Q While you were in India you engaged in
20 going on camping trips with students, right?

21 A I did. There were no victims
22 associated with that.

23 Q Mr. Comstock, what do you consider a
24 victim?

25 A Having some type of sexual relationship

1 whether it be just touching or fondling. The
2 camping trips in India were high school kids.

3 Q Mr. Comstock, would a victim include a
4 person you were staring at -- voyeurism?

5 A Technically.

6 Q Would a victim include the children
7 that were in the child pornographic images you
8 were looking at?

9 A I guess so. The pornography that was
10 found in my cell most recently was all from
11 commercial sources. I had actually offered to
12 show them what I had. If they found it I thought
13 they would think nothing of it. I offered to show
14 it to them.

15 Q These were images that you cut out?

16 A They were images cut out of things.
17 They also included images of food and a car I
18 liked and a few things like that. They were
19 things that appealed to me.

20 Q It included photos of young boys
21 between the ages of ten and 14 -- prepubescent
22 boys.

23 A Yes.

24 Q Mr. Comstock, when were these things
25 found in your room at Butner?

1 A It was about a year ago. I don't know
2 the exact date.

3 Q Did you collect this all in one period
4 or did you collect it over a period of time?

5 A If I saw something I liked I would cut
6 it out or tear out the page or whatever and put it
7 in an envelope. I offered to show the envelope to
8 Dr. Bourke.

9 Q Why would you collect these items?

10 A Because they were attractive to me.

11 Q What do you mean by attractive to you?

12 A My sexual orientation is to the ten to
13 14 year olds. I find ten to 14 year olds
14 attractive whether they're clothed or not clothed.

15 Q Those items that you cut out, were they
16 arousing to you? Did they pique your sexual
17 interest?

18 A I don't think I ever got them to
19 masturbate by or anything like that. They were
20 just attractive. I don't recall ever using them
21 for fantasy fulfillment.

22 Q Why did you go through the trouble of
23 cutting out pictures of ten to 14 year old boys
24 over an extensive period of time and keep them in
25 your room?

1 A They were attractive to me. From time
2 to time maybe once a month I would look at them.

3 Q So you would look at them once a month.

4 A Maybe not that much.

5 Q They weren't posted on your wall, were
6 they?

7 A No.

8 Q You had them in an envelope you said?

9 A Yes.

10 Q Was this envelope in a desk drawer?

11 A We have a storage box under our beds
12 for legal documents and things like that.

13 Q Why did you hide these photos?

14 A They weren't hidden. That's where I
15 kept all kinds of documents; my letters from home,
16 legal documents. It was just a storage place. We
17 don't have much room to store in a prison cell.

18 Q Mr. Comstock, in that collection of
19 photographs there was a photograph of a young
20 boy's frontal shot.

21 A I read that. I don't remember it. If
22 there was it must have been from National
23 Geographic or something. I honestly don't
24 remember a frontal nude. If there was it was not
25 in a pornographic pose or anything like that.

3 A Someone that was openly trying to
4 overtly display their genitalia or possibly had an
5 erection or something like that. It was nothing
6 like that. It was like you would see pictures of
7 people from India; women that had breasts showing
8 or kids around a swimming hole.

9 Q You said that pornography is if there's
10 genitals exposed or an erection. If there was a
11 photograph of a child that was just partially
12 clothed only wearing underwear would that count as
13 pornography to you?

14 A If I had pictures like that it was not
15 for pornographic reasons.

16 Q What would be for pornographic reasons?

17 A What would have been?

18 Q Yes. You said for pornographic
19 reasons. Could you explain what you mean by that?

20 A I mean they were not gathered to turn
21 me on.

22 Q Why were you gathering these photos?

23 A Because they were attractive. Again, I
24 had pictures of a car, I had pictures of food, I
25 had pictures of boys. I guess I feel it's

1 something that seemed rather minor because I was
2 open with anybody seeing it. I wasn't worried
3 about a shakedown.

4 Q Do you remember where these items were
5 found during that shakedown?

6 A In an envelope in a box under my bed as
7 I recall. I didn't notice they were gone for a
8 while.

9 Q Mr. Comstock, if I could turn your
10 attention to some of your treatment that you had
11 while you were in Kansas.

12 A All right.

13 Q You completed that program in Kansas,
14 correct?

15 A Yes, I did.

16 Q You heard Ms. Graves reading some of
17 the components of your discharge report which is
18 Government Exhibit No. 14 in that binder in front
19 of you.

20 A Yes.

21 Q In that report as Ms. Graves read on
22 the first page of Government Exhibit No. 14 which
23 is Bates stamped at the bottom 1360 there's a
24 mention about you essentially presenting as
25 asexual. Do you see that in the second to last

1 paragraph? His MSI was similar to his entry MSI.
2 However, on his exit Mr. Comstock presented as
3 asexual; that is he denied any interest in sexual
4 behaviors.

5 A Yes, I see that.

6 Q When you left Kansas that first time
7 you said you didn't have any sexual interest in
8 children or boys between the ages of ten to 14.

9 A I feel then much like I feel now.

10 Q That next line says you were open about
11 your attraction to children with the folks in
12 Kansas, weren't you?

13 A Yes.

14 Q You admitted you were a pedophile then
15 too, didn't you?

16 A Yes, I did.

17 Q It says that you took minimal
18 responsibility for your offending in that report.
19 Did you take responsibility for your offending?

20 A I thought I did. That's somewhat
21 subjective judgment.

22 Q On page 1361 Ms. Graves read a
23 component that said you were highly motivated for
24 treatment. Were you motivated to try to get
25 through the treatment program?

1 A I wanted to get out of prison and I
2 wanted not to offend again and those went
3 hand-in-hand. Yes, I think I was motivated to
4 finish treatment.

5 When I first got into the program I
6 dropped out for a while because they were going to
7 do the part that to me could come back to haunt me
8 in later court proceedings. For about a month I
9 was out of the program and then I got back in
10 because the discipline measures for being a
11 program dropout were very severe and I completed
12 the program at that time.

13 The sexual history thing they do in the
14 program is where you list victims and name names
15 and so forth. I felt it was a Fifth Amendment
16 violation.

17 Q In spite of your reticence you were
18 still motivated to complete the program, or at
19 least that's what the report says.

20 A Yes. Once I had decided to go ahead
21 and complete it I did the best I could.

22 Q On page 1362 of Government Exhibit No.
23 14 Ms. Graves read a portion that said
24 Mr. Comstock completed a PMPC. What is PMPC?

25 A I don't remember PMPC. You did a

1 complete review of your triggers and your relapse
2 prevention. The relapse prevention plan was for
3 you to stay out of trouble. It was a long thing.
4 It was like 20, 30, 40 pages. They said I did a
5 pretty good job with it. Everyone had to complete
6 one.

7 Q As part of your learning about
8 treatment in Kansas one of the things that you
9 learned was that engaging in fantasies about boys
10 between the ages of ten and 14 was a bad thing,
11 right?

12 A Yes.

13 Q Doing that sort of fantasizing could
14 lead you down the path of engaging in bad
15 behavior, right?

16 A Yes.

17 Q Would you agree that it's unhealthy for
18 you to engage in those sort of fantasies?

19 A Yes.

20 Q At the time it appeared that you were
21 concerned about finding essentially a replacement
22 behavior for your fantasy urges for young boys.
23 Was that correct at the time?

24 A Where are you finding that?

25 Q That's also on the same page in that

1 same paragraph on Bates stamp 1362. The paragraph
2 begins with Mr. Comstock.

3 A I'm not finding it.

4 Q Mr. Comstock, on the screen in front of
5 you is Bates stamp 1362.

6 A Yes.

7 Q It's the third to last line in that
8 paragraph that begins with Mr. Comstock completed
9 a PMPC.

10 A Is it highlighted?

11 Q No. It's right below the highlighted
12 section. It states he stated he is concerned
13 about finding replacement behaviors that are
14 healthy, appropriate and meet his romantic and
15 sexual needs. Do you see that line?

16 A Yes.

17 Q Mr. Comstock, did you find a
18 replacement for those needs?

19 A I just tried to work on adult
20 relationships that were not youth oriented. I
21 turned to reading, I did different things. In
22 terms of the future I hope to have a dog that will
23 help me with emotional needs and try to stay
24 active.

25 Q Did the folks at Kansas tell you that

1 perhaps cutting out pictures of young boys might
2 be a bad trigger for you?

3 A I don't remember that specifically.
4 They talked about pornography, not about pictures
5 of kids. I think probably always an attractive
6 ten to 14-year-old male whether they're walking
7 down the street or whatever will be attractive to
8 me. If it's in a magazine it will be attractive.
9 It doesn't mean I want to fantasize about it or
10 have any sexual thoughts.

11 Q Mr. Comstock, do you see any problem
12 with you having those cutout photos of ten to
13 14-year-old boys that were taken in the shakedown?

14 A No.

15 Q You don't think that's a big deal.

16 A No.

17 Q Mr. Comstock, with regard to the reason
18 why you were in the Kansas prison you pled guilty
19 to two state charges, correct?

20 A Correct.

21 Q What were those charges?

22 A Indecent liberties with a minor times
23 two.

24 Q With regard to the indecent liberties
25 with a minor what did you do?

18 Q Mr. Comstock, you said the older one
19 was in the car with you and the younger one was at
20 your home.

24 Q With the older one -- meaning the one
25 in the car -- the touching on the thigh -- you

1 pled guilty to inappropriate touching.

2 A Yes, I did.

3 Q Did you think that touching him on the
4 thigh was inappropriate?

5 A Not really. The two cases were tied
6 together and I wanted the situation to play out
7 for everybody involved. I wanted it to be over
8 with.

9 Q Mr. Comstock, what do you mean by play
10 out for everybody involved?

11 A I didn't want the kids to suffer any
12 more from prosecutors and police and things such
13 as that. I wanted them to be able to call it
14 quits.

15 Q Do you think that they were suffering
16 as a result of the actions of the police and
17 prosecutors?

18 A I think they were suffering. The
19 reason for the suffering was primarily because of
20 me and what was deemed by their mother to be
21 inappropriate and sexual. It was very emotionally
22 damaging to them whether it was meant to be or
23 not.

24 Q Mr. Comstock, the older child testified
25 and said to the police that you had touched his

1 genitals under his shorts. Is it your testimony
2 that that didn't happen?

3 A Yes, it is.

4 Q Mr. Comstock, if you didn't think
5 touching him on the thigh was really an unlawful
6 act why did you plead guilty to it?

7 A The two cases were tied together. If I
8 pled to them both they were going to run them both
9 concurrently. I knew I was guilty of the younger
10 brother so it didn't seem like worth making an
11 issue over it.

12 Q Just so I'm clear, you didn't think it
13 seemed like a big deal that you were pleading
14 guilty to touching a kid in a sexual manner and
15 you didn't?

16 A I had the younger brother and to me
17 they were related in the sense that someone
18 thought it and it didn't do much good in my own
19 mind to separate the two.

20 Q How did you know these two brothers?

21 A They were students at the school. They
22 also played on the basketball team I helped
23 coach -- one of them did.

24 Q What do you mean by at the school? Is
25 this a school you were teaching at?

1 A I was a counselor at Lakin Elementary
2 School.

3 Q As a counselor what were some of your
4 duties?

5 A The primary deal was preventative
6 guidance where you go into every classroom once
7 every two weeks and you have a program on caring,
8 on how to get along with others, on what to do
9 about bullying and various things like that. You
10 do that about 26 times a year with each grade.

11 You help them with individual problems
12 like if somebody has a death in the family or for
13 kids a death of a pet can be traumatic. You deal
14 with issues.

15 The principal always wanted to get
16 involved when there were discipline problems and
17 wanted you to work out programs with kids that
18 were always in trouble to try to get them to be
19 more thoughtful and not to create the kind of
20 problem.

21 Q Were you good at being a counselor?

22 A In my own opinion I was an outstanding
23 physical education teacher, health teacher and
24 administrator. I was a good counselor.

25 Q Why do you make the distinction --

1 A I didn't have the level of educational
2 background. I had a certification in counseling.
3 I did not have licensure or a Master's Degree.

4 Q As a result of being a counselor did
5 you encounter these two brothers often in the
6 school?

7 A Once every two weeks. They were not
8 problem makers. They were gone a lot --

9 Q Could you repeat that again?

10 A They were absent a lot. I had to
11 contact the mother about that. They both had a
12 lice problem. We would get one cleared up and
13 then the other would come in.

14 In elementary school with lice when one
15 of the siblings is out you send both of them home.
16 They were missing loads of school time.

17 Q Did you ever help them out with their
18 lice problem?

19 A No. I offered that but that was
20 pretext.

21 Q Could you explain what you mean by
22 that?

23 A I offered.

24 Q You offered to help who?

25 A I thought if they couldn't afford it

10 A All I'm saying is that this was a way
11 to get them into my home. I could have offered to
12 come to their house. I offered to buy it for them
13 and just drop it off, but that didn't work.

14 Q You said you tried this as a pretext to
15 get them into your home. How did you get to take
16 the older brother in your car? How did that
17 relationship get started?

18 A When they signed up for basketball they
19 both wanted to play and then they said we don't
20 have a car. I said I would try to make sure they
21 found a way to get to the games.

22 With the older one I would call or make
23 arrangements with one of his teammates. I did not
24 coach his team. He would come to the rec center
25 and would be picked up by the parent of one of the

1 other kids and taken to the game and brought back
2 to the rec center. Is that clear?

3 Q That helps.

4 Why did you feel the need for you to
5 take him in your car? There were other parents,
6 right?

7 A Yes. Almost all the time that worked
8 out. One time it didn't.

9 Q Was that the one time that --

10 A Yes, it was.

11 Q It was the one time he was in the car
12 with you that you touched him on the thigh and
13 said good job?

14 A Yes. He may have been in the car other
15 times doing different things but that was the one
16 time, yes.

17 Q How is it that the younger brother was
18 at your house?

19 A He played on my team so I was taking
20 him to the game. His older brother had an away
21 game. He stayed with me while his brother was
22 gone and we played our game and came back.

23 Q After he played in the basketball game
24 you brought him back to your house.

25 A Yes.

1 Q Why didn't you take him home?

2 A He had nobody at home. I was waiting
3 for his older brother and I took them both home.

4 Q How did you end up sitting with the
5 younger brother in your lap?

6 A I asked him if he wanted something to
7 eat for breakfast and he said yes. I brought him
8 some cereal in a bowl.

9 Between the couch and the TV was a
10 coffee table, and when I was watching TV I would
11 usually sit in front of the couch and lean back on
12 the legs of the couch and put my food on the
13 dining table and that's what I did for him. What
14 I did was I just slid it behind him.

15 Q You said this was breakfast. Did he
16 stay overnight?

17 A No.

18 Q The game was in the morning?

19 A He was there in the morning. We were
20 going to the game a little later.

21 Q While you guys were eating breakfast
22 you slid in behind him.

23 A Yes.

24 Q Why did you do that?

25 A I wanted the affection, I guess.

4 Q Was it you touching him, him touching
5 you?

8 A I felt comfortable until I had molested
9 him and then I felt awful. I quit after a very
10 short period of time.

13 Q And then you fondled him. How did you
14 fondle him?

22 Q Was it your intention to have sex with
23 him?

25 Q Was it your intention for him to touch

1 you?

2 A No.

3 Q Why did you do this?

4 A I'm a pedophile. It felt good. I was
5 attracted to boys that age. I shouldn't have done
6 it. I was sorry for doing it, but I did it.

7 Q Was it just spur of the moment?

8 A Yes.

9 Q Did it happen very quickly, or was this
10 something that he was sitting in your lap for a
11 while and then you just kind of reached around
12 him?

13 A Somewhat spur of the moment. Somewhat
14 like you described.

15 Q Did you unbutton his pants very quickly
16 and then just kind of jam your hands in there and
17 gab his penis?

18 A I slid it in fully.

19 Q You were acting in a slow fashion in
20 order to get your hand on his penis.

21 A As I recall, yes.

22 Q Do you recall how long you touched his
23 penis?

24 A I think about 20 seconds. That's my
25 guess now.

6 Q After you did this did you tell him not
7 to say anything about it?

10 Q Was that a concern of yours?

13 Q Did you get the impression that he was
14 compliant; he was kind of hoping you would do it?

16 Q So the fondling was all your idea.

18 Q He didn't do anything to lead you on.

20 Q By the time this had taken place how
21 long had you known him?

23 Q Was he in the car with you and his
24 older brother when you had him in the car?

25 A They were together at times. When I

1 touched his older brother on his knee he was not
2 in the car, no.

3 Q Just for clarification, did you touch
4 him on his knee?

5 A On his thigh.

6 Q Where about on his thigh?

7 A About two inches above his knee.

8 Q Was that the inner thigh, on top of the
9 thigh?

10 A On top of the thigh.

11 Q Why did you do that?

12 A Because it just felt good. It also
13 seemed to be natural. He won a ball game and I
14 said how did you do and I went good job.

15 Q You just made a motion where you had
16 your hand in a fist. Was your hand in a fist when
17 you did it?

18 A No. I didn't want to shake the
19 counter.

20 Q I understand.

21 Your hand was open.

22 A Yes.

23 Q How old was the older brother when this
24 happened?

25 A 11 and ten I believe they were.

6 Q When did you talk to her about the lice
7 shampoo? Was this after you had touched the
8 younger brother?

10 Q The lice shampoo conversation took
11 place before you touched the two boys?

13 Q Did you use lice shampoo as a pretext
14 to try to touch other boys in school?

16 Q Mr. Comstock, as a result of your plea
17 of guilty in Kansas to the two charges involving
18 the older and younger brother were other charges
19 dropped?

25 Q Were you aware of any other

1 investigations that were taking place?

2 A I know at one point the investigator
3 had been to every student in the school and asked
4 them if there had been inappropriate touching. I
5 think they found no one. I'm told now that there
6 were two boys who did say something had happened.

7 Q What do you know about those two boys?

8 A Their aunt rented below me and they had
9 access -- I was in an upstairs apartment -- they
10 had a door that opened up to that so they were in
11 a way neighbors. They were not brothers. They
12 looked like twins, but I think they were cousins.

13 Q How old were they?

14 A Maybe second grade.

15 Q Did you touch these two boys?

16 A No.

17 Q Do you know why these two boys would
18 say that you did?

19 A No. Knowing elementary kids they like
20 the attention. It's the nature of elementary
21 kids.

22 Q Could you kind of walk me through that?
23 What do you mean by they like the attention?

24 A If you walked up and said did
25 Mr. Comstock like you, did he ever touch you, do

1 you think it's inappropriate an elementary kid
2 might well say yes to all those. He was getting
3 individual attention from the examiner.

4 When the kids walked in the building I
5 held my hand for them to give me a high five. It
6 could have been perceived that way.

7 Q Do you think you were the victim of
8 wrong perceptions of touching a lot?

9 A Not a lot, no.

10 Q Have you ever known that someone said
11 he touched me and it was just perceived wrong?

12 A The only thing I can think of is when I
13 was in Alaska I touched a boy on the head and the
14 father thought it was racist because he was a
15 black boy. It wasn't racist. I was just trying
16 to get his attention. Nothing ever came of that.

17 Q Mr. Comstock, in addition to the state
18 charges that you were charged with as a result of
19 the search there were federal charges.

20 A That's correct.

21 Q What were those federal charges?

22 A I'm going to have trouble remembering
23 the exact language -- use of a computer to
24 download images of children below certain ages and
25 explicit sexual conduct -- something to that

1 effect.

2 Q Mr. Comstock, there has been testimony
3 by Dr. Amy Phenix.

4 A Yes.

5 Q You were here during that testimony.

6 A Yes, I was.

7 Q She testified about a number of items
8 that were found in your house as a result of a
9 search.

10 A That's correct.

11 Q One of the things found was a magazine
12 from NAMBLA.

13 A Yes.

14 Q Was that actually found in your house?

15 A Yes, it was.

16 The magazines from NAMBLA are not
17 pornographic. They don't have pictures in them.
18 They tend to be the status of the law at present,
19 what's happening around the world. There are no
20 pictures. If there are picture they're totally
21 clothed.

22 Q At the deposition you testified that
23 one of the reasons you didn't continue subscribing
24 or receiving that literature is because it didn't
25 have a lot of pictures, isn't that right?

7 A I suppose I would have liked the
8 magazine better if it had photos, but not
9 necessarily pornographic -- just of kids.

19 A That's correct.

23 A That's correct.

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1 Answer: Don't know. Question: Were you
2 expecting it to be pornographic? Answer:
3 Expecting it to be more pictures in there;
4 although not necessarily hard pornography but just
5 pictures of boys maybe at the park or at the beach
6 or what have you.

7 A That's probably true.

8 Q Mr. Comstock, you didn't necessarily
9 expect it to have hard pornography. Were you
10 expecting it to have at least some nude photos?

11 A No. I think when I subscribed I knew
12 it did not.

13 Q Mr. Comstock, in addition to that
14 magazine from NAMBLA there were also kids' video
15 games in your possession, correct?

16 A Yes.

17 Q And permission slips for kids to come
18 to your house and use your computer, correct?

19 A I had games. They were not for kids so
20 much as I enjoyed them. They were things like
21 Centipede or Phoenix. If you're familiar with
22 games those are adult games, too.

23 I wanted the parents to know where
24 their kids were. If they were at my house I
25 wanted them to know that they were there.

1 Q Why would you want kids at your house?

2 A I wanted to be comfortable in my house.

3 Q I guess what I'm asking is why would
4 you want kids to come to your house?

5 A (No audible response.)

6 Q You didn't have kids, right?

7 A No, I did not.

8 Q There weren't any kids coming over to
9 play with your kids.

10 A No.

11 Q You were a counselor at the school.

12 A Yes.

13 Q Were you doing after-school tutoring?

14 A No.

15 Q Why would you want kids to come over to
16 your house?

17 A As Dr. Phenix said I enjoy emotional
18 contact with children. To some extent it was
19 mutual.

20 Q What do you mean by mutual?

21 A I think they enjoyed being there.

22 Q Do you think the kids enjoyed being
23 around you?

24 A Yes.

25 Q Do you feel like they got benefit out

1 of being there?

2 A For the most part it didn't hurt them.
3 I'm not sure they benefited from playing video
4 games anymore than they would in your home.

5 Q Mr. Comstock, why would you want to
6 have these young boys between the ages of ten and
7 14 in your home when you knew you were a
8 pedophile?

9 A That was not a wise decision.

10 Q That may be the case, but why would you
11 do that?

12 A They'd come over and I enjoyed the
13 emotional warmth they provided.

14 Q By emotional warmth did you feel like
15 it made you feel good to have these kids around?

16 A Yes. They would enjoy themselves.
17 They were having a good time. I enjoyed that.

18 Q Did you feel like you related to them?

19 A Yes.

20 Q Would you feel more comfortable being
21 around kids than you would adults?

22 A I would say it was the same. I've had
23 excellent adult friends and still do. I had adult
24 friends every place I've been including girl
25 friends. Kids have enjoyed being around me, too.

1 Q Would you have considered those kids
2 friends?

3 A Many of them, yes.

4 Q As friends would you try to spent as
5 much time as you could with them?

6 A I don't recall that, no.

7 Q Mr. Comstock, you claimed in your
8 writings to various doctors at the Bureau of
9 Prisons that you've only had one hands-on victim.
10 Do you remember that?

11 A I don't recall it. Of the two victims
12 in Kansas to me one was a hands-on.

13 Q The older brother was not a hands-on
14 victim.

15 A Technically he was. I put my hand on
16 his thigh.

17 Q You told Dr. Phenix and Dr. Demby that
18 you've had some victims.

19 A Yes.

20 Q Who are these some victims?

21 MS. GRAVES: Objection.

22 MR. GRAY: Your Honor, it's part of the
23 testimony that's being given; especially in light
24 of what we've heard is this is there to satisfy
25 the issue of not only acts of child molestation

1 but attempted acts of child molestation.

2 THE COURT: Do you mean specifically by
3 name?

4 MR. GRAY: Not specifically by name.

5 THE COURT: What are you looking for?

6 MR. GRAY: What I'm looking for, Your
7 Honor, is more specifically were these children
8 that were with him --

9 THE COURT: Ask him a specific
10 question.

11 BY MR. GRAY:

12 Q Mr. Comstock, where did these some
13 victims -- where did you assault these some
14 victims in terms of location?

15 MS. GRAVES: Objection.

16 THE COURT: Overruled.

17 THE WITNESS: One was my brother when I
18 was --

19 MS. GRAVES: Objection. Move to
20 strike.

21 THE COURT: Overruled. It's in the
22 records anyhow already.

23 THE WITNESS: Sir, repeat the question.

24 THE COURT: I heard the number seven
25 before and I've heard some testimony about it.

1 These are the same ones you referred to before in
2 other discussions with other people, would that be
3 correct?

4 THE WITNESS: Yes.

5 THE COURT: You may proceed.

6 I'm not so sure you have to give
7 exactly the location and dates and instances. I
8 think the location isn't really relevant anyhow.

9 MR. GRAY: Your Honor, we would argue
10 that it is relevant to an extent.

11 THE COURT: I think dates are relevant
12 because of the doctor's timeline and her testimony
13 in terms of occurrences and so forth.

14 MR. GRAY: I'm going to streamline the
15 questioning to make it move along faster.

16 BY MR. GRAY:

17 Q The seven victims you told Dr. Demby
18 and Dr. Phenix about, was that an accurate number?

19 A I think so. In Kansas they pushed and
20 pushed. They considered victims kids that I
21 supervised in the shower even though it was part
22 of my job. All the voyeurism images they also
23 included pornography so we put a number to it and
24 added them in.

25 Q Mr. Comstock, would you please turn in

1 that binder in front of you to tab number 12 which
2 is Government Exhibit No. 12? If you would turn
3 to the second page.

4 A Okay.

5 Q Do you see that chart?

6 A Yes. I've seen this before.

7 Q What is it?

8 A When I came here to Butner Dr.
9 Hernandez said how many victims do you have and I
10 said six or seven. He said Mr. Comstock, I think
11 you've got a lot more than that. By Monday --
12 this was on a Friday -- I was to have a complete
13 set.

14 At that point what I remembered was
15 what I had given SOTP and I summarized the SOTP
16 records and so I tried to duplicate that form and
17 I couldn't duplicate it. This has many of the
18 exaggerations and inconsistencies that were also
19 in the Kansas form.

20 Q This is a document that you wrote.

21 A Yes, it is.

22 Q All of the locations that are listed
23 there are locations that you've written in.

24 A Yes.

25 Q On this chart there's a number of

1 columns.

2 A Yes.

3 Q The column that says victims, you wrote
4 victims?

5 A Yes.

6 Q Are the seven victims that you told Dr.
7 Demby and Dr. Phenix about are they listed on that
8 column?

9 A Yes.

10 Q The seven victims that you told Dr.
11 Demby and Dr. Phenix about, are those all hands-on
12 victims?

13 A Yes.

14 Q Meaning those are victims that you
15 touched?

16 A I think five were. I included a couple
17 of family members as victims; one only because it
18 was financial and emotional.

19 Q When you were talking to Dr. Demby and
20 Dr. Phenix and they asked you about child sex
21 victims you listed one that was a financial
22 victim?

23 A Yes.

24 Q That was your sister?

25 A Yes.

1 Q You said that you listed another family
2 member.

3 A Yes.

4 Q So there are five non-family member
5 hands-on victims.

6 A Yes.

7 Q Were you including the two from Kansas?

8 A Yes.

9 Q On your chart at the bottom where it
10 says 58 to 59 Lakin, Kansas -- do you see that?

11 A Yes.

12 Q Right across from that it says four.

13 A Yes.

14 Q That's within the victims' category.

15 A Yes.

16 Q If you go all the way across to the
17 other side there's a four on top of a hash mark.

18 A On that same line?

19 Q On that same line.

20 A I find one underlined.

21 Q At the top it says a summary sexual
22 history.

23 A Yes.

24 Q What do you mean by a summary of your
25 sexual history?

4 A I was trying to include all victims
5 that were included in the SOTP program in Kansas.

9 Q That's the location of where the
10 assault took place.

12 Q To the left of that is a column that
13 says age. Is that your age?

15 Q To the right of that victims' column
16 there's a column that begins A-N-A-L. What is
17 that?

21 Q Are you engaging in anal sex on them,
22 are they engaging on you? What do you mean by
23 anal?

25 Q Let's go to the next column over. What

1 is that?

2 A Female.

3 Q Are we identifying that a victim is a
4 female in that instance?

5 A Yes. In two cases the females were the
6 aggressors.

7 Q I notice where it says female it says
8 two and one or one and two in that female column.
9 Do you see where it says Harrison, Arkansas and is
10 that Fayetteville, Arkansas?

11 A Yes.

12 Q But it doesn't say one and two in the
13 victim column. Why is that?

14 A Because I didn't think they were
15 victims.

16 Q Unless they were a victim you wouldn't
17 put them in the victim column.

18 A That's correct.

19 Q To the right of that female column
20 there's a column that has R-E-L on it. What does
21 that mean?

22 A Relative.

23 Q By relative do you mean it's a relative
24 of yours or a relative of one of the victims?

25 A A relative of mine.

1 Q To the right of that column is one that
2 says S-T. What does that mean?

3 A Student.

4 Q The column to the right of that, what
5 is that?

6 A Athlete.

7 Q Is that A-T-L for athlete?

8 A Yes.

9 Q To the right of that is C-O.

10 A Counselee.

11 Q Meaning somebody that you were a
12 counselor for.

13 A Yes.

14 Q To the right of that there's another
15 series of letters. What does that mean?

16 A One which I cannot describe and also
17 what I call CSW or male prostitutes.

18 Q Does CSW stand for child sex worker?

19 A Yes, it does.

20 Q As we go through this chart you're
21 saying that this chart was created by you when Dr.
22 Hernandez asked you to do what exactly?

23 A He asked me to come up with victims.
24 What I tried to do was to duplicate what I had
25 done in Kansas.

4 Q What is that?

6 Q How do you know that?

11 Q This document which we have marked as
12 Government Exhibit No. 22, did you write these
13 columns out?

16 Q While you were at the Kansas SATP was
17 this the only chart or written document that you
18 wrote detailing out some of your victims?

21 Q Mr. Comstock, would you turn to tab
22 number 23 in that binder?

24 Q What's that?

25 A It's an autobiography. It was done as

1 part of the SATP program.

2 Q Did you write that?

3 A Yes, I did. It was required.

4 Q So that's your handwriting?

5 A Yes, it is.

6 Q What sort of guidance were you given
7 when you were asked to write it?

8 A To make it as detailed as possible. To
9 start with when you were born and your whole life
10 including as much as you could about your sexual
11 history.

12 Q When you did the autobiography did you
13 do the autobiography at about the same time as you
14 did the chart which is Government Exhibit No. 22?

15 A No.

16 Q How far apart in time did you write
17 those?

18 A I'm guessing two and a half to three
19 years.

20 Q The chart that you did for Dr.
21 Hernandez which is at tab number 12 -- the first
22 chart we were just speaking about -- how long
23 between the chart you did at Kansas which is
24 Exhibit 22 and that chart -- how much time
25 elapsed?

6 A That was done probably three or four
7 months apart.

11 A Yes.

13 A Yes.

16 A I think it is, yes.

18 A I had the reports but I don't think
19 they happened. The other two I was involved in
20 and was charged with.

23 A No.

25 A Yes, but I don't count the boy where I

1 put my hand on his thigh.

2 Q All the way to the far right-hand
3 column on that Exhibit No. 12 where it says four,
4 what does that four mean?

5 A Still on Lakin?

6 Q Still on Lakin.

7 A Four would be other. I don't recall
8 what it's relating to.

9 Q In that column that you previously
10 identified as counselee there's a four there as
11 well.

12 A Yes.

13 Q What does that four indicate?

14 A They were my counselees. The town is a
15 small town. Everybody I would have come in
16 contact with was a counselee.

17 Q You have a column that's marked
18 athlete. You didn't put either of the two
19 brothers that you pled guilty to in the athlete
20 column, did you?

21 A No.

22 Q Why not?

23 A One boy was not an athlete of mine.

24 Q Which one was that?

25 A The older.

1 For the other boy I was a coach but I
2 had a co-coach and he did most of the coaching.
3 Our relationship was more counselee.

4 Q So the five non-related victims that
5 apparently you told Dr. Phenix and Dr. Demby
6 about, where are they located on this chart?

7 A I'm not recalling right now where I had
8 them. I'm not recalling making up a list of seven
9 or what have you. It's not ringing a bell.

10 Q Do you not remember where the other
11 three victims -- where those took place?

12 A No, I do not.

13 Q Mr. Comstock, was Michael one of your
14 victims on your chart?

15 A Yes.

16 Q Would he be reflected in one of your
17 stays in the Philippines? Would he be reflected
18 in that line?

19 A Yes, he would.

20 Q Michael is a person that you consider
21 to be like a stepson to you.

22 A Yes.

23 THE COURT: Is this a good time to take
24 a break?

25 MR. GRAY: Yes, Your Honor.

1 THE COURT: Let's take our afternoon
2 break.

3
4 (Recess.)

5
6 THE COURT: You may continue.

7 MR. GRAY: Thank you, Your Honor.

8 BY MR. GRAY:

9 Q Mr. Comstock, I was asking you about
10 whether or not Michael was on that chart as a
11 victim.

12 A Yes, he was.

13 Q When you met him he was a child sex
14 worker.

15 A Yes, he was.

16 Q Meaning that you were paying him for
17 sexual services.

18 A Yes.

19 Q But eventually that relationship became
20 more than just a John and prostitute relationship.

21 A Yes.

22 Q In fact, you look at him now as your
23 stepson.

24 A Foster son.

25 Q When did you stop having sex with him?

1 A It would have been weeks or maybe a
2 month of him moving into the house.

3 Q How old was he when that happened?

4 A I suppose 12.

5 Q When he moved into the house did you
6 pay his pimp to buy him?

7 A No.

8 Q On this chart Michael is reflected in
9 that 15 that you have across from the Philippines.

10 A Yes.

11 Q And he would be in that ten where it
12 says child sex workers.

13 A Yes.

14 Q That number of 15 victims that you had
15 in the Philippines and those ten child sex
16 workers -- those child sex workers are you
17 considering those victims?

18 A Yes.

19 Q There's another line that says vacation
20 in Thailand where you have two victims and across
21 the line it says two child sex workers.

22 A I'm not finding it, but yes.

23 Q Right below the Philippines where it
24 says age 37 there is V-A-C Thailand. That's
25 vacation Thailand, correct?

1 A Yes.

2 Q Number two for victims.

3 A Yes.

4 Q All the way across under the other
5 columns there's two underneath the hash mark for
6 two child sex workers.

7 A That's correct.

8 Q You had sex with two child sex workers
9 while you were in Thailand.

10 A Yes.

11 Q If we go down to Canary Islands there's
12 five victims and then there's five child sex
13 workers that you had sex with there.

14 A Yes.

15 Q You had sex with five child sex workers
16 while you were in the Canary Islands.

17 A Yes.

18 Q If we go down to where it says Rogers,
19 Arkansas where it says 44 to 45 --

20 A Yes.

21 Q If we go across there's one victim in
22 the counselee section, right?

23 A Yes.

24 Q You had one victim that was a
25 counselee.

5 A I'm just not recalling right now. I
6 recalled something when I made the sheet up, but
7 I'm not recalling right now.

10 A I'm not sure.

15 A Yes.

18 A Right.

21 A Right.

23 A Correct.

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1 A No.

2 Q So you remember you didn't have any
3 victims in Dubai.

4 A Correct.

5 Q You don't remember whether or not you
6 had any victims in Rogers, Arkansas.

7 A That's correct.

8 Q The child sex workers that you had --
9 for instance the five in the Canary Islands -- you
10 remember the five child sex workers you paid for.

11 A Yes.

12 Q Those five child sex workers were in
13 fact five prostitutes that you had sex with.

14 A Yes.

15 Q That five is not an exaggeration.

16 A No.

17 Q When you told Dr. Demby and Dr. Phenix
18 that you had seven and out of those seven two
19 were -- one was a relative and one was a financial
20 victim -- that number was a lie.

21 MS. GRAVES: Objection.

22 THE COURT: Overruled.

23 THE WITNESS: Let me try to explain
24 that. It was all self-disclosure under
25 intimidation and obviously against my best

1 judgment. If that had not happened I would have
2 had seven victims.

3 BY MR. GRAY:

4 Q It was your testimony that this number
5 of 78 that you have on this chart under Government
6 Exhibit 12 --

7 A I still think it includes some that are
8 such things as seeing kids in the showers. We
9 gave a number to that. I'm failing to remember
10 what number. I think that was true -- I know that
11 was true on the 101. I'm not remember whether it
12 was true in the 78 or not.

13 Q Mr. Comstock, in the autobiography
14 where you were describing the sexual acts with
15 children were the acts that you describe in your
16 autobiography accurate?

17 A Yes.

18 Q In your autobiography where you
19 described the acts that engage in this instant
20 offense -- the Lakin, Kansas events -- where you
21 discussed where you were charged with indecent
22 assault of two minors and then you discuss two
23 additional minors -- you in fact remember those
24 two.

25 A I don't remember victimizing the two

1 other boys. I'm said to have.

2 Q Let me ask this question: Did you or
3 did you not victimize those two boys?

4 A I did not.

5 Q Although you pled guilty to touching
6 both of them.

7 A Only to the two. I pled guilty to two
8 victims.

9 Q Mr. Comstock, your attraction to
10 children is not solely based on a sexual drive, is
11 it?

12 A No. I love children.

13 Q In fact you never want to hurt
14 children, right?

15 A No.

16 Q In fact you told counselors that you
17 feel a very close connection with children, right?

18 A That's true.

19 Q As part of this close connection you
20 feel an emotional attachment to children, right?

21 A That's true.

22 Q It would be fair to say that a lot of
23 your conduct has been driven by your emotional
24 need to connect with these children, correct?

25 A I suppose.

9 I'm a workaholic. I worked long hours
10 at school, but when I left school I emotionally
11 was around adults most of my life.

14 A That's true.

18 A They were fellating me. There were
19 several mutual masturbations.

21 A There were several mutual
22 masturbations.

23 Q You engaged in this sort of conduct
24 while you were a member of a group in the
25 Netherlands with other sex offenders, correct?

11 Q Part of this relationship of being
12 around these people that were like you they would
13 give you child photographic materials, wouldn't
14 they?

16 Q One of the guys in the group never gave
17 you videotapes that had child pornography on
18 there?

20 Q In fact, he would give you child
21 pornography that was on a videotape that was
22 preceded by a normal film so in a sense he would
23 have a regular film like the Secret Garden and the
24 first couple minutes would be a regular movie and
25 then he would splice in child pornography.

1 A That's correct.

2 Q You received this from that guy who was
3 a friend of yours in this group in the
4 Netherlands.

5 A That's the only time that happened.

6 Q Is there a group that's similar to that
7 Netherlands group in the United States?

8 A I thought perhaps NAMBLA would be but
9 it was not.

10 Q There was a guy in that group who the
11 FBI came asking you about during the course of one
12 of their investigation, isn't that correct?

13 A That's correct.

14 Q As a result of the FBI asking a bunch
15 of questions about this guy and his child
16 pornography and his activities you were fired from
17 a job, right?

18 A I was not re-contracted.

19 Q When did this non-re-contracting take
20 place?

21 A I would have to look at the chart.
22 Rogers, Arkansas.

23 THE COURT: I don't think the chart
24 itself is an exhibit. If you're speaking about
25 Dr. Phenix's chart it's not in that book. We can

1 give you a copy.

2 MR. GRAY: Your Honor, I believe he was
3 referring to the chart under Exhibit No. 12.

4 BY MR. GRAY:

5 Q Mr. Comstock, was that the chart you
6 were referring to?

7 A Yes. It does not give the year. It
8 was when I was 44/45 years old.

9 Q After working in Rogers, Arkansas you
10 went to work in Rangely, Colorado then Dubai and
11 you went back to Rangely, Colorado and then went
12 back to the Philippines and worked in the
13 Philippines for a number of years.

14 A That's right.

15 Q Then you were fired from the job in the
16 Philippines as a result of your relationship with
17 Michael, isn't that right?

18 A I was not re-contracted.

19 Q After you were not re-contracted you
20 came back to the states and started working in
21 Lakin, Kansas, right?

22 A That's correct.

23 Q The job you had in the Philippines was
24 as a counselor, correct?

25 A That's correct.

4 Q Mr. Comstock, does your sister work?

6 Q She works a normal 8:00 to 5:00 day?

8 Q Mr. Comstock, you have admitted you're
9 pedophile; right?

11 Q But you feel like you can control your
12 urges.

14 Q You feel you can control your urges in
15 part because you went through treatment in Kansas,
16 right?

18 Q You went through treatment in other
19 programs prior to Kansas, correct?

22 Q So you did complete other psychological
23 treatment with regard to the issue of pedophilia
24 and your urges toward children prior to the Kansas
25 SATP program, correct?

1 A Minimal, yes.

2 Q You worked in a school after the FBI
3 came and investigated which led to you not getting
4 a contract in Rogers, Arkansas.

5 A Correct.

6 Q You went to work at another school
7 after you lost your job in the Philippines as a
8 result of your relationship with Michael.

9 A That's correct.

10 Q You had the cutouts of the boys in your
11 room in Butner after you had successfully
12 completed the Kansas SATP program, isn't that
13 correct?

14 A True.

15 Again, I will say if anyone here saw
16 those cutouts they would not feel them to be
17 offensive at all.

18 Q Since you've been at Butner you have
19 not taken or engaged in any sex offender
20 treatment, have you?

21 A No, I have not.

22 Q In fact, you refuse to do so because
23 you're concerned about the ramifications.

24 A That's true.

25 Q Yet you feel now you are a changed

1 person and you will not offend anymore.

2 A That's correct.

3 Q Why do you feel that?

4 A Because of my age. I just don't have
5 the desire. I have been in prison. I don't want
6 to come back. It's the same reasons I've given
7 earlier. I think adult sex with a child can be
8 damaging particularly emotionally and
9 psychologically. There have been periods in my
10 life when I had volitional control.

11 Q You said you had volitional control.
12 When you were engaging in the sexual acts in, say,
13 the Philippines you had volitional control.

14 A No.

15 When I was in the Netherlands and I was
16 a workaholic and had a very active professional
17 and social life I didn't have any victims in the
18 Haig at that time at all.

19 Amsterdam is a metropolitan city and
20 has a number of child prostitutes. My life itself
21 did not revolve around that.

22 Q On the chart on Exhibit 12 you have 35
23 to 41 the Haig, Netherlands seven victims and of
24 them you have two child sex workers.

25 A That was in Amsterdam.

1 Q Where was Amsterdam located?

2 A About 60 miles north of the Haig.

3 Q In the Netherlands?

4 A Yes.

5 Q While you were working in the Haig you
6 traveled to Amsterdam to engage in acts with child
7 sex workers.

8 A It was an hour train ride.

9 Q You feel that's an example of how you
10 had volitional control of being able to refrain
11 from engaging in sexual acts with children?

12 A I think at the time I was in the Haig I
13 made very few trips to Amsterdam. There were sex
14 workers there. I was there seven years. I think
15 that is something of a sample.

16 Q The five victims that you had at the
17 Haig who were not child sex workers one was a
18 student and one was an athlete, how is that an
19 example of how you had volitional control?

20 A I'm not remembering those cases right
21 now.

22 Q Mr. Comstock, is it your testimony that
23 you can refrain from engaging in sex with kids
24 when you want to?

25 A Yes, sir, it is.

9 Q When the opportunity was there and you
10 wanted to have sex with kids you would have sex
11 with kids.

13 Q If you're released and the opportunity
14 is there because your sister is at work and
15 there's a child and you have the urge how do we
16 know you're not going to want to give in at that
17 time?

23 Q If there was a child in the park
24 between the ages of ten and 14 years old and you
25 have the urge to touch that child sexually would

1 you report yourself?

2 A If I had a support network I might, but
3 I would certainly leave the situation. I might
4 leave and then someone in my family or therapy
5 group or whatever I'd say I had a close call today
6 or I might have had a close call -- kind of walk
7 me through it.

8 Q If your sister has a computer at the
9 house and there's the opportunity to get access to
10 child pornography what steps would you take in
11 order to stop that from happening?

12 A As I understand it number one she
13 doesn't have one. Number two, if you have one you
14 can have safeguards put on the computer. You can
15 also not connect to the Internet and use it for
16 word processing and stuff such as that and not
17 connect to the Internet.

18 Q Mr. Comstock, what steps would you take
19 if you were to get a Sunday paper and in the
20 circular they have the pictures of the little boys
21 with underwear on because underwear happens to be
22 on sale at Target?

23 A I don't think that would have an affect
24 on me; I just don't. I wouldn't cut it out. The
25 pictures I had in the room were not from catalogs

1 so to speak. They may have been from magazines or
2 newspapers. I've never gone through Sears or J.C.
3 Penney's or anything like that to get pictures.
4 We don't even have catalogs in prisons.

5 Q Mr. Comstock, the chart that's under
6 tab number 12 that we've been talking about,
7 that's a chart that you wrote out.

8 A Yes.

9 Q So you're familiar with that chart and
10 you know that is a chart that you wrote.

11 A Yes.

12 Q You're the author of that.

13 A Yes.

14 Q Mr. Comstock, if you would go to tab
15 number 19.

16 A Yes.

17 Q There is a document there. Do you know
18 what that document is?

19 A Yes.

20 Q What is it?

21 A I was upset at a lot of things. I had
22 a friend who was a psychologist. I just wrote
23 down my triggers. It was written for him and for
24 me. I wrote down things that bother me and things
25 that make me mad.

1 Q On the last page of that document which
2 is Bates number 1557 it says in paragraph 13
3 volitional control-I think so. I had no brushes
4 with the law until the age of 58 years old.
5 Working with children for 40 plus years.
6 Volitional control-I think so. Is that your
7 writing?

8 A Yes, it is.

9 Q Mr. Comstock, would you turn to tab
10 number 20?

11 A Okay.

12 Q Do you know what that document is?

13 A I remember doing it. I don't recall
14 the details.

15 Q Did you type out this document?

16 A I believe I did.

17 Q Where it says why I'm not a sexual
18 dangerous person even though I'm a pedophile
19 that's your title?

20 A Yes.

21 Q The information that's written within
22 there is that -- are those your thoughts?

23 A Yes.

24 Q Mr. Comstock, tab number 22.

25 A Yes.

5 Q Where it has the tabbing where it says
6 at the top your age, sexual behavior, who and how
7 you know, thoughts, feelings and so on are those
8 your column headings?

24 Q Where it says thoughts -- where it says
25 I don't like this, I want to get away -- are those

1 your thoughts or is that the thoughts of MLB?

2 A It's my thoughts.

3 Q Where it says anxious and confused are
4 those your feelings or are those the feelings --

5 A My feelings.

6 Q If you would turn the page to where it
7 says at the bottom 2271 there's a 15 that says TV
8 and then a row that says 15 and RC. In between
9 there is another row where it says note MFM. What
10 does that mean?

11 A Massage, fellatio, masturbate.

12 Q Is that conduct that you're engaging in
13 or is that conduct that's being engaged in upon
14 you?

15 A That's my activity.

16 Q That line right below that where it
17 says 15 -- it looks like RC -- there's FWS. What
18 does that mean?

19 A Fondle while sleeping.

20 Q The next column where it says who and
21 how you know -- you are the junior leader at the
22 YMCA or is that the victim?

23 A The victim was.

24 Q Where it says thoughts -- those are
25 your thoughts?

1 A Yes.

2 Q And those are your feelings?

3 A Yes.

4 Q When it goes across where it says the
5 column common fantasies and masturbation habits it
6 says MFM. Is that you engaging in MFM upon him or
7 is that you masturbating yourself?

8 A It's me on him.

9 Q Mr. Comstock, if you would turn the
10 page to where it says page number 2274.

11 A Okay.

12 Q There's a row that says New Delhi,
13 India, 1969 to 1971. Is that a row that denotes
14 the location where you were at?

15 A Yes.

16 Q If we see a row like that that means
17 that's where you were located at the time.

18 A Yes.

19 Q The row right below that says sexual
20 behavior 27 FL -- it has sexual behavior that's
21 listed in there -- who and how you know, thoughts,
22 feelings. Under frequency it says once per month.
23 Anal penetration three time only or one time only.

24 A One time only.

25 Q Does that identify with your conduct?

1 A Yes.

2 Q Does that mean that you were having
3 some sort of sexual activity with them one time
4 per month regularly?

5 A One time only.

6 Q Where it says where that took place at
7 your apartment on campus?

8 A Yes.

9 Q And where it says grooming and shaping
10 behavior, arrange for him to work for me, was good
11 to his parents does that mean he was working for
12 you in some capacity?

13 A Yes.

14 Q By grooming and shaping behavior is
15 this the activity that you took in order to get
16 the victim closer to you?

17 A Yes.

18 Q Mr. Comstock, if you would turn to
19 what's Bates numbered 2285.

20 A Yes.

21 Q It says your age and it says 58.

22 A All right.

23 Q The first line has BET. Is that an
24 acronym or is that supposed to be a victim's name?

25 A It's a victim's name.

1 Q Is that Beto?

2 A Yes.

3 Q Is this one of the acts you pled guilty
4 to?

5 A Yes, it is.

6 Q Right below that is another column that
7 says 58 TR or is that JR?

8 A That's JR.

9 Q Is this one of the acts that you pled
10 guilty to?

11 A Yes, it is.

12 Q Right below that there is a another 58
13 and it has two in superscript above that.

14 A Yes.

15 Q What does two mean?

16 A That's the two boys that accused me.
17 They said they were bothers but they were actually
18 cousins I thought.

19 Q The feelings where it says excited and
20 happy is that your feelings?

21 A Yes.

22 Q Where it says thoughts and it says they
23 don't even seem to care although they did respond
24 that was you writing that down?

25 A Yes.

5 Q This act that you have listed in this
6 row where it says 58, two this in fact happened.

13 Q So it happened.

15 Q Right below that it says arrested and
16 then it has a child pornography charge.

18 Q You wrote all these in.

20 Q If you would turn to tab number page 3.

21 A All right.

22 Q It's the autobiography.

23 A Okay.

24 Q You wrote this autobiography.

25 A Yes, I did.

1 Q Your own handwriting.

2 A It appears to be, yes.

3 Q This was done at the campus SATP.

4 A Yes.

5 MR. GRAY: No further questions, Your
6 Honor.

7 THE COURT: You may examine the
8 witness.

9

10 CROSS EXAMINATION

11

12 BY MS. GRAVES:

13 Q Mr. Comstock, what name do you go by
14 with your family and friends?

15 A Don.

16 Q Do you mind if I call you Don?

17 A That's all right.

18 Q Don, how long have you been in prison?

19 A 11 years now.

20 Q Had you ever been in prison before?

21 A No, I never had.

22 Q In fact you had been free to travel the
23 world before you got locked up, weren't you?

24 A Yes, I had.

25 Q How has prison affected you?

25 Q How has your decline in health affected

1 your sexual interest?

2 A I'm assuming that's the main reason I
3 don't seem to have any sexual interest. I don't
4 get erections. I don't fantasize. The other day
5 in our day room there are four TVs side-by-side
6 and the second from the right there was a Little
7 League game on. It was an international game.
8 Japan playing southern California I think. On the
9 end TV was CNN. I realized and was kind of
10 shocked I was watching CNN. The Little League
11 game didn't interest me. I wasn't interested in
12 the Little League game. I feel like the libido
13 has decreased.

14 Q On a scale of one to ten and ten being
15 the peak of your sexual interest in children where
16 would you say your interest is now?

17 A One or two.

18 Q Do you feel that you have control of
19 your sexual interest in children?

20 A Yes, I do.

21 Q Do you feel like you always had
22 control?

23 A No.

24 Q You changed in that respect.

25 A Yes, I have.

4 Q What motivated you to want to change?

13 Q When you were in the Kansas sex
14 offender treatment program why did you enter the
15 program to begin with?

19 Q Were you a volunteer for the program or
20 was it ordered as part of your judgment?

22 Q Once you got there you were compelled
23 to disclose certain things in order to remain in
24 the program, is that correct?

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1 Q When you were making these disclosures
2 did the treatment providers give you feedback as
3 to whether they thought your disclosures were
4 adequate?

5 A Yes.

6 Q What would be the consequences if they
7 felt your disclosures were not adequate?

8 A You would be considered a program
9 refusal which I became at one point. When I was
10 in the program about halfway through it was time
11 to do the sex history and the PPG and I felt like
12 to do that could be very damaging to me in terms
13 of future charges and so I dropped out of the
14 program. I told them I would not do those things.
15 I would not do the sex history, I would not do the
16 PPG, I would not do the polygraph.

17 They immediately suspended me from the
18 program. They called me a program refusal. When
19 that happened I was moved into maximum custody --
20 the more dangerous part of the prison -- the
21 commissary was dropped from \$60 a week down to
22 five. They collected your TV and your
23 electronics. You got no good time. They lowered
24 your visitation. There were tremendous pressures
25 to get back in the program.

9 A Yes, I did.

13 A I think you do learn things that can be
14 of use in the program. The reason I have been
15 reluctant to get back involved was because of all
16 the negatives. One of the negatives is they drag
17 you through the dirt. It's kind of like being in
18 a civil commitment hearing. It's that way for 18
19 months and ever day is like that and it's very
20 hard.

23 A Yes. If you say I was a good teacher
24 they say it's compartmentalizing.

25 Q Essentially the program would not allow

1 you to maintain a sense of dignity about your
2 previous life.

3 A No.

4 Q When you made the reports disclosing
5 the victims did you distinguish between what types
6 of offenses you had committed against those
7 victims in terms of child porn, voyeurism versus
8 hands-on offenses?

9 A In the first history there were some
10 that were voyeur, some pornography. I read a book
11 on 101 something. I thought if I wrote 101
12 victims they would leave me alone so I added some
13 for seeing kids in the showers even though that
14 was part of my job.

15 Q Once you completed that list did you
16 feel that the program administrators were
17 satisfied with what you had written?

18 A As I went through they seemed
19 satisfied. When I finished they made my prognosis
20 poor which surprised me.

21 Q With the providing of the list they
22 seemed satisfied with that?

23 A Yes. I took a polygraph twice.

24 Q You passed the polygraph?

25 A Yes.

1 Q When you took the polygraph you were
2 relying on your own definition of what a victim
3 was or what they had told you.

4 A I was relying on theirs.

5 Q When you provided that information to
6 the sex offender treatment program did you feel
7 that the information was privileged?

8 A No. I think that's why I had so much
9 trouble with it. That's why I was out of the
10 program for a while. Even though I had hoped it
11 was privileged I was afraid it would come back to
12 haunt me which it has done.

13 Q Did anyone tell you that it wasn't
14 privileged?

15 A I was told the best way to not be
16 civilly committed was to complete the program.
17 That's not true.

18 Q Are you talking about back when you
19 were in Kansas they were already talking about
20 civil commitment?

21 A Yes.

22 Q For the state civil commitment program.

23 A Yes.

24 Q You were told you could avoid civil
25 commitment in the State of Kansas if you completed

1 the program.

2 A Not a hundred percent. They said the
3 best way to avoid it. They didn't say if you
4 complete it you will avoid it.

5 Q Were you told that Kansas would provide
6 that information to Butner or to the federal
7 government?

8 A We were given the opinion that the
9 information would not be used against us in any
10 court proceeding.

11 Q When you arrived at Butner and you were
12 approached by Dr. Hernandez I believe you
13 indicated you thought he already had the Kansas
14 material.

15 A Yes. He said some things that
16 indicated to me he knew about the 101 so that's
17 what he wanted repeated. That's when I made the
18 chart out and I couldn't get to 101.

19 Q Why couldn't you get to 101?

20 A I couldn't remember that many. I just
21 didn't get there.

22 Q Do you recall when you obtained counsel
23 regarding this whole process?

24 A It was after I talked to Dr. Demby and
25 after I talked to Dr. Hernandez.

1 Q Was that in 2007?

2 A Probably so. I was brought here in
3 2006. It was while I had my original counsel Ms.
4 Jane Pierce who is now in Washington.

5 Q After you had spoken with Dr. Hernandez
6 and provided him with that extensive list and
7 after you had spoken with Dr. Demby who was doing
8 a forensic evaluation of you that's when you
9 consulted counsel after you had spoken to them.

10 A After that, yes, to the best of my
11 recollection.

12 Q In your conversations with counsel have
13 counsel warned you to not adopt the disclosures
14 that were made in treatment?

15 A They told me not to confer with anybody
16 from the government.

17 Q In your later conversations with
18 evaluators you did not admit to -- you did not
19 adopt the disclosures that you had given in the
20 Kansas program or the summary you had provided to
21 Dr. Hernandez, is that correct?

22 A That's correct.

23 Q That's because of your understanding of
24 what your lawyers were telling you.

25 A That's correct.

11 Q Was the purpose of this network so that
12 you could facilitate the transfer of child porn to
13 one another?

15 Q Was it so you could facilitate the
16 abuse of children among one another?

18 Q When this one individual provided you
19 with some child porn he was operating outside the
20 purposes of that program.

22 Q When you were molesting young boys was
23 the purpose of that molestation to obtain sexual
24 gratification?

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1 have been nice if they did to the extent they
2 could at that age. It never was important for me
3 to obtain sexual gratification.

4 Q When you touched them and you became
5 excited was that sexual?

6 A It was sexual, but I could count on one
7 hand the number of times I might have orgasmed.

8 Q Nevertheless what you're saying is that
9 when you were touching them it was for sex -- that
10 was your sexual outlet.

11 A It was also an emotional outlet.

12 Q I'm asking was it a sexual outlet.

13 A Yes.

14 Q You can admit that.

15 A There were dozens I touched that were
16 not sexual.

17 Q The molestation that was sexual?

18 A Yes.

19 Q As far as your plan to live with your
20 sister Mary when you're released from prison,
21 could you explain to the Court your relationship
22 with your sister?

23 A We've always been very close. I'm the
24 oldest in the family, she's the youngest. When I
25 had emotional ups and downs she was there. I

1 think the reverse is kind of true. We supported
2 each other and we've always been close.

3 Q Have you ever lived with her before?

4 A Off and on. When I came home from
5 overseas for the summers or Christmas holidays I
6 would stay at her place.

7 Q Are you aware of her standing in the
8 community where she lives?

9 A Yes.

10 Q What is that?

11 A She's an outstanding member of society.
12 She's been a teacher and a graduate student. She
13 worked on her Ph.D for a while when I was staying
14 with her.

15 Q Would you ever want to do anything that
16 would embarrass or threaten her standing in the
17 community?

18 A No.

19 Q How do you feel about her willingness
20 to allow you to live with her?

21 A Most grateful. It's something she
22 doesn't have to do. It means a tremendous amount
23 to me.

24 Q I think you indicated on direct that
25 you had derived emotional support from adult

1 relationships.

2 A Yes.

3 Q Can you expound on that a little?

4 A My best friend for 35 or 40 years is
5 still my best friend. Every place I've been I had
6 adult friends including usually a lady friend. I
7 had a social life. I have people I still
8 correspond with. I write to one of them once
9 every week or two. I miss a lot of them.

10 Q You've always maintained employment, is
11 that right?

12 A That's correct.

13 Q Would you intend to seek employment if
14 released?

15 A Probably not. I have Social Security,
16 I have a little bit of retirement from a previous
17 retirement fund. If I don't have to pay rent then
18 I'm good to go.

19 Q So you think you're well enough to
20 work.

21 A Probably not.

22 Q One of the things you offered to do
23 while you were at Butner was you offered to
24 undergo castration in order to demonstrate that
25 you would not be sexually dangerous.

1 A That's correct.

2 Q How far did you go along those lines?
3 Did you investigate that?

4 A I did. It got to where the medical
5 people kind of turned me down. They said they
6 couldn't do it voluntarily only if it was a
7 byproduct of my prostate cancer. Sometimes
8 castration is done for that.

9 Q There's this exhibit that Mr. Gray
10 pointed you to -- Exhibit No. 20 -- where I
11 believe you indicated that you prepared this and
12 said why I am not a sexually dangerous person.

13 A Yes.

14 Q In number one you said you do have
15 volitional control with an exclamation point. You
16 still feel that way.

17 A Yes, I do.

18 Q In number seven you indicated that love
19 and lust are not the same. Take away lust and
20 what do you have left. Yes, I admit to that.

21 Are you saying you now no longer would
22 seek sexual gratification from children?

23 A Yes.

24 Q And that your feelings for children now
25 are purely love without the sexual gratification.

1 A That's true.

2 Q Do you recognize that you have probably
3 forfeited any right or any trust anyone might have
4 in you in terms of having you around children?

5 A Yes, I do.

6 Q You can live with that.

7 A Yes.

8 Q Number 19 is the list of my triggers.

9 A Tab number 19?

10 Q Tab 19.

11 I think the subheading you have here is
12 areas of conflict and tension, is that right?

13 A Yes.

14 Q These are things that upset you, are
15 they not?

16 A Yes.

17 Q This is not some list of things that
18 excite you in any way or get you interested.

19 A I write about lots of things including
20 politics.

21 Q Can you describe for the Court the
22 conditions under which you've been held at Butner?

23 MR. GRAY: Objection. Relevance, Your
24 Honor.

25 THE COURT: I'll give her some

1 latitude.

2 MS. GRAVES: Thank you.

3 THE COURT: You may proceed.

4 THE WITNESS: Pretty much as any other
5 prisoner. We are separated --

6 THE COURT: Just for the record, I
7 intend to take a tour of Butner sometime while I'm
8 here in the next couple months.

9 THE WITNESS: Butner has one unit --
10 the Maryland Unit -- specifically for child
11 molesters or people with sex crimes. Then there's
12 the rest of the prison and we're kept separated.
13 They go to great efforts to keep us apart.

14 Basically there's no difference in the
15 treatment. We eat in the same dining hall, wear
16 the same uniform, we go to the same clinic, we're
17 double bunked. I'm not at the moment but many
18 are. It's more or less a prison.

19 BY MS. GRAVES:

20 Q Are there any limitations in your
21 recreation time or any limitations on when you can
22 go to the dining hall and whatnot?

23 A Yes.

24 They're different than what they are
25 for the lower compound. I'm not sure they're

1 less. We have a much smaller recreation area.
2 The food is the same.

3 Q Out at Butner does each unit go with
4 its own group to the dining hall? Is that how
5 it's organized?

6 A We're very carefully divided. We go as
7 a unit.

8 Q During your time at Butner have you
9 been disciplined for anything?

10 A Yes.

11 One time I had pictures on my wall. I
12 went through a period where I was a little bit
13 belligerent. That was after November 8, 2006
14 which was my out date. That's when everything
15 being the same I would have gotten out. It's now
16 been over five years ago. There was a while after
17 that happened I kind of had trouble accepting the
18 authority of the BOP.

19 One time I swatted a kid in the head --
20 kind of a big brother SWAT -- nonetheless I spent
21 time in the hole. I think those are the only two
22 times.

23 Q Have you worked while you were at
24 Butner?

25 A Initially I worked in the kitchen.

1 Q How long did you work in the kitchen?

2 A About two months. I was having some
3 medical problems and so I retired. They said I
4 couldn't do that but I did.

5 Q What sort of medical problems were you
6 having?

7 A When I was standing I was getting
8 dizzy. I had blue lips. I was unsteady on my
9 feet.

10 Since I have been in the federal
11 correctional system I have been unassigned for
12 medical reasons. When I came to Butner all of a
13 sudden after the year I had a heart attack they
14 decided I should work in the kitchen.

15 Q You were willing to go along with it
16 but the folks at the kitchen thought that you
17 shouldn't be there, is that right?

18 A I felt I shouldn't be there.

19 Q Who asked you not to come back? Did
20 they ask you not to come back or did you ask not
21 to go back?

22 A I gave them a letter saying that I
23 resigned and they said you can't do that and we're
24 going to take you to the lieutenant which they did
25 and he made a phone call up to the Maryland Unit

1 and that's when a decision was made that those in
2 the Maryland Unit don't have to work. I and
3 everybody else after that if they work it's as a
4 volunteer.

5 Q I'm going to turn your attention to
6 Respondent's Exhibit No. 7.

7 A That's my letter of resignation.

8 Q That's your letter of resignation from
9 the kitchen.

10 A Yes.

11 MS. GRAVES: That's all I have. Thank
12 you.

13 THE COURT: You talked about if you
14 were released the need for some support. Tell me
15 what you have in mind. What kind of support would
16 you get if you were to go back in the community?

17 THE WITNESS: For support I have my
18 sister. I have a brother who is fairly
19 supportive. His immediately family is not but he
20 is. He's also in Arkansas.

21 I would hope to come up with other
22 people that were just friends. I don't know how
23 that would come about.

24 THE COURT: How big a town does your
25 sister live in?

1 THE WITNESS: I think it's about 2500.

2 THE COURT: You've lived there before.

3 THE WITNESS: No. I've never been
4 there.

5 THE COURT: I don't know anything about
6 the geography.

7 THE WITNESS: I think it's about 60
8 miles north of Little Rock.

9 THE COURT: What does your sister do
10 there in town?

11 THE WITNESS: She is an instructor at
12 the Arkansas State University at the local campus.

13 THE COURT: Which is how far?

14 THE WITNESS: The campus is in the same
15 town.

16 THE COURT: How big a school is it, if
17 you know?

18 THE WITNESS: It's not a big school.

19 THE COURT: I would imagine you would
20 have to register with the police department as a
21 sex offender.

22 THE WITNESS: Yes, I would.

23 THE COURT: You have discussed that
24 with your sister.

25 THE WITNESS: Yes. Her home was

1 approved at one point.

2 THE COURT: You said you were friends
3 with somebody for 35 or so years. This person is
4 the a male/female?

5 THE WITNESS: It's a she.

6 THE COURT: How far away does she live?

7 THE WITNESS: She lives in Florida.
8 She's not real close.

9 THE COURT: Is there anybody physically
10 close that you have an acquaintance with or
11 friends?

12 THE WITNESS: I've never lived there.
13 I've never had much trouble making friends. It's
14 just a matter of getting there and finding
15 appropriate social contacts where I can make
16 friends.

17 THE COURT: You say it's not your
18 intention to go to work. Is it your intention to
19 volunteer or do anything else?

20 THE WITNESS: I was thinking about
21 that. I thought maybe in terms of emotional
22 attachment not only would it be nice to have a dog
23 but there is a kennel nearby and that perhaps I
24 could volunteer at the kennel.

25 THE COURT: It wouldn't have to do with

1 coaching or schools or anything like that.

2 THE WITNESS: No.

3 THE COURT: You indicated you've taken
4 up reading. What do you read? What kind of books
5 do you read?

6 THE WITNESS: I've been reading the
7 Larson series and I love John Grisham books.

8 THE COURT: Did you read the latest
9 one?

10 THE WITNESS: I haven't read that one
11 yet.

12 THE COURT: I am in the middle of it.
13 I can't put it down.

14 You read other books?

15 THE WITNESS: Yes.

16 THE COURT: Have you read Innocent?

17 THE WITNESS: Yes, I have read that.
18 It takes place in a town in Oklahoma as I recall.

19 THE COURT: Right.

20 I know you can't say because you're not
21 there -- how would you keep busy every day? Do
22 you watch TV? Do you like TV?

23 THE WITNESS: I could even watch the TV
24 of my choice.

25 THE COURT: Do you like TV?

1 THE WITNESS: I love TV.

2 THE COURT: Tell me what kind of
3 programs you watch.

4 THE WITNESS: My channel I watch mostly
5 is CNN. I kind of enjoy politics. I watch
6 sports.

7 THE COURT: Any of the series, any of
8 the pawn shops or storage wars?

9 THE WITNESS: I like Two and a Half
10 Men.

11 THE COURT: Have you seen the new ones?

12 THE WITNESS: No.

13 THE COURT: You indicated you have some
14 income. Do you collect Social Security?

15 THE WITNESS: I'm eligible.

16 THE COURT: How much, do you know?

17 THE WITNESS: I don't know.

18 THE COURT: When you were working
19 overseas did you pay into Social Security?

20 THE WITNESS: It depends on the school.
21 Most of them we did.

22 THE COURT: You said you had a small
23 retirement. From where?

24 THE WITNESS: From the Netherlands.
25 They had a program --

1 THE COURT: For the Americans that
2 worked over there?

3 THE WITNESS: Yes.

4 THE COURT: Do you know whether you're
5 eligible for Medicare?

6 THE WITNESS: I think everyone 65 is,
7 aren't they?

8 THE COURT: I don't know.

9 You said your sister is your younger
10 sister. How many years younger?

11 THE WITNESS: 11.

12 THE COURT: Any other questions?

13 MR. GRAY: Just one, Your Honor.

14

15 REDIRECT EXAMINATION

16

17 BY MR. GRAY:

18 Q Mr. Comstock, if you were released
19 would you participate in a sex offender treatment
20 program?

21 A For the reasons I've outlined I would
22 prefer not to. I would not mind mental health
23 treatment. I don't want to get drug through the
24 dirt again. I don't think an additional program
25 would help me. I feel like I would be better off

1 and healthier if I'm not involved in that type of
2 program. If it was a different type of mental
3 health program I would be glad to participate.

4 MR. GRAY: No further questions.

5 THE COURT: Anything further?

6 MS. GRAVES: No, sir.

7 MR. ROYSTER: Your Honor, our next
8 witness is going to be Dr. Demby and that will be
9 by video. If you want to play a little bit of
10 that today we can.

11 THE COURT: We'll break. It's 5:00.
12 We'll start it tomorrow. Do you have the
13 equipment here?

14 MR. ROYSTER: Yes.

15 If you want to get started a little
16 earlier in the morning we'll certainly be here and
17 ready to go at 8:30.

18 THE COURT: I have no problems with
19 that at all. 8:30 is perfect with us.

20

21 (Court adjourned for the day at 5:30
22 p.m.)

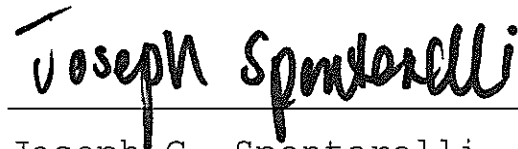
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REPORTER'S CERTIFICATE

I, Joseph C. Spontarelli, court reporter,
do hereby certify that the pages contained herein
accurately reflect the notes taken by me, to the
best of my ability, in the above-styled action.

A handwritten signature in black ink, reading "Joseph Spontarelli", written over a horizontal line.

Joseph C. Spontarelli,
Court Reporter